



Master Agreement
Software License, Subscription, Services, Support and
Maintenance, and Hosting Services Agreement

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Master Agreement Terms and Conditions

THIS SOFTWARE LICENSE, SERVICES, SUPPORT AND MAINTENANCE, AND HOSTING SERVICES AGREEMENT (the “Agreement”) made as of the ___ day of ___, _____ (the “Effective Date”).

BETWEEN: **N. HARRIS COMPUTER CORPORATION** (“Harris”)

- and -

New Braunfels Utilities (“Organization”)

WHEREAS, Harris wishes to grant the Organization a license to utilize certain Software; to provide certain Services related to said Software; and to enter into an agreement for the Support and Maintenance of said Software; and to provide certain Hosting Services to Organization; and

WHEREAS, the Organization wishes to acquire a license to utilize the Software; to obtain Services related to said Software; to acquire ongoing Support and Maintenance for said Software; and to obtain Hosting Services for said Software and its system;

NOW THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

ARTICLE I: INTERPRETATION

Section 1.1 Definitions

- 1.1.1 **“Annual Hosting Fees”** means any Annual Hosting Fees included in the SOW (Schedule “B”) to this Agreement.
- 1.1.2 **“Annual Subscription Fees”** means any annual subscription fees for Software licensed on a subscription basis as set out in Schedule “A” to this Agreement.
- 1.1.3 **“Completion of Services”** means that the Software is operational and performing in conformity with the specifications set out herein. Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominant business system.
- 1.1.4 **“Named Users”** means the total number of Users who can access the Software at any one time as detailed in Schedule “A,” and further described in Article II.
- 1.1.5 **“Named User License”** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule “A”.
- 1.1.6 **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such

independent development can be established by evidence that would be acceptable to a court of competent jurisdiction. Confidential Information does not include any Customer Data or Data.

- 1.1.7 **“Customer Data.”** As between Organization and Harris, all Customer Data will remain the sole and exclusive property of Organization. Organization is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Customer Data and shall ensure that the Customer Data will not violate any applicable law or the terms of this Agreement. Organization consents to the storage of Customer Data in, and transfer of Customer Data into, the United States if Organization is located in the United States and in Canada if Organization is located in Canada.
- 1.1.8 **“Data”** means all, software (including machine images) text, audio, video or images that are transmitted, transferred, or created through Organization’s use of the Solution or Hosting Services [for processing, storage or hosting by the Hosting Services] or otherwise provided by Organization to Harris.
- 1.1.9 **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- 1.1.10 **“Hosting Services”** means the services to be provided by or on behalf of Harris under this Agreement that includes hosting, monitoring, operating and maintaining the Software on hardware and related equipment and will permit Organization to use and access the Software via a method as determined solely by Harris. The Hosting Services shall also include storing all data entered and maintained by Users through use of the Hosting Services and the provision of updates, upgrades, and bug fixes related to support and maintenance of the Software.
- 1.1.11 **“License”** means the license rights granted to the Organization pursuant to Article II hereof and includes both a Named User License and a Site License.
- 1.1.12 **“Release”** means an Update and an Upgrade.
- 1.1.13 **“Service Provider Content”** means content such as software (including machine images), data, text, audio, video or images that Harris’s service provider or any of its affiliates make available in connection with the Hosting Services to allow access to and use of the Hosting Services, including APIs; WSDLs; documentation; sample code; software libraries; command line tools; proofs of concept; templates; and other related technology (including any of the foregoing that are provided by our personnel). Service Provider Content does not include the Hosting Services or other third-party software, data, text, audio, video or images made available to Organization in conjunction with the Hosting Services. Some Service Provider Content may be provided to Organization under a separate license, such as the Apache License, Version 2.0, or other open-source license.
- 1.1.14 **“Site”** means solely at the production environment described in Schedule “A”.
- 1.1.15 **“Site License”** means a license that restricts the Software such that it can reside in one production environment and a reasonable number of non-production environments.
- 1.1.16 **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software.
- 1.1.17 **“Third Party Software”** means the third-party software product licensed to Organization by the applicable licensors as listed in Schedule “A” The terms and conditions for the third-party software are listed in Schedule “E”. Future Releases of the software may require alternate third-party software to be licensed by Organization, which will be subject to a third-party license agreement between Organization and the relevant third-party software licensor. In such case Schedule “A” shall be amended to add any such third-party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- 1.1.18 **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality

or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).

- 1.1.19 **“Upgrade”** is a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is typically designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- 1.1.20 **“User”** means any employee of Organization or any of Organization’s agents who are authorized by Harris pursuant to this Agreement to have access to the Software.

Harris currently uses AWS as an additional service provider that acts both as a hosting facility and provides additional third-party software support to Harris. The following additional words and expressions have the following meanings. Organization acknowledges and agrees that such defined terms may change in the event that Harris changes the third-party service provider in accordance with Section 2.6:

- 1.1.21 **“AWS”** means Amazon Web Services, Inc. Amazon Web Services and AWS are trademarks of Amazon.com, Inc. or its affiliates in the United States and/or other countries. Please see <http://aws.amazon.com>.
- 1.1.22 **“AWS Content”** means software (including machine images), data, text, audio, video, or images that AWS or Harris makes available related to the Hosting Services or on the AWS Site to allow access and use of the Hosting Services, including APIs; WSDLs; sample code; software libraries; command line tools; proofs of concept, templates, and other related technology. AWS Content does not include the Hosting Services or Third-Party Content. Some AWS Content may be provided to Organization under a separate license, such as the Apache License, Version 2.0, which will be identified to Organization in the notice file or on the download page, in which case that license will govern Organization’s use of that AWS Content.
- 1.1.23 **“AWS Site”** means <http://aws.amazon.com> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.
- 1.1.24 **“Third Party Content”** means data, software (including machine images), text, audio, video or images of a third party other than AWS made available on [AWS Marketplace or on developer forums, sample code repositories], public data repositories, community focused areas of AWS Site, or any other part of the AWS Site that allows third parties to make available software, products, or data.

Section 1.2 **Currency**

All references to currency in this Agreement and the related Schedules refer to U.S. Dollars.

Section 1.3 **Schedules**

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement and are incorporated herein by reference:

- Schedule “A” – Description of Software
- Schedule “B” – Statement of Work (“SOW”) with attached
 - Fees & Payment Schedule
- Schedule “C” – Sample Change Order Form

- Schedule “D” – Standard Support and Maintenance Guidelines
- Schedule “E” – Third Party Terms and Conditions
- Schedule “F” – Hosting Services Availability
- Schedule “G” – Security Standards

ARTICLE II: SOFTWARE LICENSES

Section 2.1 Grant of Licenses

- 2.1.1 **Harris Software is licensed, not sold.** Software under this Agreement may be licensed perpetually or on a subscription basis, as indicated and designated on Schedule “A.”
- 2.1.1.1 **Perpetual Licenses.** For Software licensed to Organization on a perpetual basis, as indicated on Schedule “A,” and subject to the terms and conditions of this Agreement, including without limitation the payment of the License Fees, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format for the number of Named Users specified in Schedule “A” (the “License”). This License does not apply to Third Party Software, which are licensed pursuant to their terms.
- 2.1.1.2 **Subscription Licenses.** For Software licensed to Organization on a subscription basis, as indicated in Schedule “A,” and subject to the terms and conditions of this Agreement including without limitation the payment of the Subscription Fees on an ongoing basis, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Hosting Site and for the number of Named Users specified in Schedule “A” (the “License”). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this Subscription Agreement may state otherwise.
- 2.1.2 Any Software furnished by Harris in machine-readable form may be copied in whole or in part by Organization for use on the Organization’s platform and operating system environment which is operating the Software (“Designated Computer System”), whether hosted or on premises. This environment can be accessed by Users can be from any internal or external computer terminal. To the extent that any temporary files associated with the Software are created during such use on such terminals, those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris.
- 2.1.3 Any License granted under this Agreement permits the Organization to: (i) use the Software for its reasonable business purposes including performance testing, disaster recovery, disaster testing, training, archival and backup, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software which may include flow diagrams, system operation schematics, and/or screen shots. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by Harris in its sole discretion in advance.
- 2.1.4 The Organization may duplicate Documentation for permitted uses so long as all required proprietary markings are retained on all duplicated copies.
- 2.1.5 Software is licensed to the Organization on multiple levels. The Software is licensed on a “Named User License” and “Site License” basis as set forth in Schedule “A”.

- (i) Named User License permits the Organization to use the Software on the Designated Computer System (including all environments such as training, disaster recovery, etc.) provided that the number of Users who may be simultaneously using the Software is limited to the number of Named Users specified for such Software on Schedule "A". A User is further defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).
- (ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and a reasonable number of non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup. Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

Organization may purchase additional licenses to use the Software as necessary at Harris' then current prices and terms.

- 2.1.6 As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.
- 2.1.7 Subject to the terms and conditions of this Agreement, including without limitation, payment by Organization of the Annual Hosting Fees, Harris hereby grants to Organization a personal, non-exclusive, non-transferable limited right, during any Term for which Annual Hosting Fees are paid, to allow Users to access and use the Hosting Services solely in connection with its use of the Software together with any further restrictions as detailed in this Agreement.
- 2.1.8 Subject to the terms and conditions of the Agreement, Organization grants to Harris and its service provider a world-wide, non-exclusive, royalty-free license to access the Customer Data for the purpose of performing the Hosting Services or as necessary to comply with the law or a binding order of a government body. Access to the Data shall only be by Harris's and its service provider's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Harris may not access the Customer Data for any other purpose without the express written consent of Organization. Access to Customer Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law or a binding order of a government body. Unless it would violate the law or a binding order of a government body, Harris will give Organization written notice and a copy of any legal requirement or order referred to requiring such disclosure.
- 2.1.9 Organization grants to Harris a world-wide, non-exclusive, royalty-free license to aggregate or compile Customer Data with the customer data of other customers using the Hosting Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Harris shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Organization grants Harris the right to access Data to provide feedback to Organization concerning its use of the Hosting Services.

Section 2.2 Term

- 2.2.1 **Term of License of Software.** This Agreement commences on the Effective Date.
 - 2.2.1.1 For any Software License(s) identified on Schedule "A" as perpetually licensed and licensed pursuant to Article 2.1.1.1 is perpetual and of indefinite duration and annual support and maintenance for the license must be renewed and kept current in order to receive product updates, security updates, and bug fixes.

2.2.1.2 For any Software identified on Schedule "A" as licensed on a subscription basis and licensed pursuant to Article 2.1.1.2, unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (the "Initial Term"). After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a "Renewal Term") subject to Harris's then-current price structure and any modifications to the terms and conditions of this Agreement made by Harris upon written notice to Organization to reflect Harris's then current version of this Agreement unless either party provides written notice to the other party of its intention not to renew within ninety (90) days of the end of the then current term; Harris shall provide prior written notice of any price increase at least one hundred and twenty (120) days prior to the end of the then current term, in order to allow Organization to opt out of any increases. The Initial Term and Renewal Term(s) shall collectively be referred to as the "Term". The License is subject to further restrictions as required under the Hosting Services provisions of this Agreement and the payment of any applicable fees as set forth in Schedule "B."

2.2.2 **Term of Services.** The term for delivery of Services hereunder shall be as set forth in any SOW appended hereto or entered into between the parties hereafter.

2.2.3 **Term of Support and Maintenance.** The initial term for services provided, pursuant to Article IV hereinafter, shall be for one year beginning on the due date, as detailed in the SOW (Schedule "B"). Thereafter, the Support and Maintenance provisions of this Article IV shall automatically renew annually, unless terminated by either party upon giving to the other not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the Support and Maintenance Fee in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable one-year term. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if the Support and Maintenance provisions of this Agreement are terminated.

2.2.4 **Term of Hosting Services.** The initial term for hosting services shall be for one year beginning on the date fees are due, as detailed in the SOW (Schedule "B"). Thereafter, the Hosting Services license shall automatically renew annually, unless terminated by either party upon giving to the other not less than ninety (90) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. The Initial Term and any Renewal Terms shall be collectively referred to as the "Term". Organization shall pay the Annual Hosting Fees in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Annual Hosting Fees for the then applicable one-year term. Harris shall not refund any Hosting Services Fees paid under any circumstances. Hosting services are licensed and provided during periods for which Annual Hosting Fees have been paid.

Section 2.3 Restrictions on Use

2.3.1 Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization's primary business or operations; (ii) disassemble, decompile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivative works of the Software; (iv) rent, lease, lend, or use the Software for time-sharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that

would cause the Software to become subject to any open source or quasi-open source license agreement.

2.3.2 The Software and related materials supplied by Harris are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software may not be resold or licensed by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

2.3.3 **Restrictions Specific to Any Hosting Services Purchased**

- (a) Organization may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the rights granted under this Agreement or otherwise use the Hosting Services or any part thereof except as expressly permitted by this Agreement without the prior written consent of Harris. Organization otherwise agrees to abide by the terms of any applicable acceptable use policy of any third party provider as updated by Harris from time to time: the applicable acceptable use policy in place as of the effective date of this Agreement is: <https://aws.amazon.com/aup/>. Harris shall notify Organization in writing if the third party provider is updated and provide Organization a copy of any additional applicable acceptable use policies of any such third party provider.
- b. Organization may not modify, translate, adapt, alter, or create derivative works of the Documentation or Service Provider Content; however, Organization may duplicate Documentation and Service Provider Content, at no additional charge, for Organization's internal use so long as all required proprietary markings are retained on all duplicated copies.
- c. No third party, other than duly authorized agents or employees of Organization authorized pursuant to Article 2 hereunder, shall have access to or use of the Hosting Services.
- d. Organization shall not copy, frame or mirror any part or content of the Hosting Services or Service Provider Content, other than copying or framing on Organization's own intranets or otherwise for Organization's own internal business purposes.
- e. Organization shall not access the Hosting Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Harris.
- f. The Organization shall not transmit, upload, post, display, distribute, store or otherwise publish, through use of the Hosting Services, any content, data, material or information that: (i) contains a software virus, Trojan horse, worm, time bombs, cancelbots or other harmful or deleterious computer code, files, programs or content that may damage, adversely affect any hardware or software, or that intercepts or misappropriates any system, program, data or information; (ii) is threatening, defamatory, libelous, harassing, abusive, profane, is an invasion of privacy, offensive, obscene, harmful or otherwise objectionable (including without limitation content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts); (iii) infringes, misappropriates or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property, proprietary right or other rights of any third party; (iv) violates any law, statute, ordinance or regulation, or that may be harmful to Harris or its service provider's operations or reputation (and shall not perform any activities that are illegal, fraudulent or may result in any of the foregoing); or (v) includes unsolicited bulk e-mails, or other messages, promotions, advertisements or solicitations ("spam") and Organization shall not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission.

- g. Organization shall not interfere with, attempt to gain unauthorized access to, disrupt or violate the security or integrity of any device, computer, communication system, software application, account, data, the Hosting Services or networks connected to the system used to provide the Hosting Services or use the Hosting Services in any way that would provide harm to it or impair anyone else's use of it. Examples include, without limitation, attempting to probe scan, or test the vulnerability of a system or breach any security or authentication measures used by a system, monitoring of data or traffic on a system without permission, falsification of origin, forging TCP-IP packet headers, e-mail headers, or any part of message describing its origin or route (use of aliases and anonymous remailers are not prohibited by this provision). Additional prohibited activities include:
 - i. Monitoring or Crawling. Monitoring or crawling of a system that impairs or disrupts the system being monitored or crawled.
 - ii. Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
 - iii. Intentional Interference. Interfering with the proper functioning of any system, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
 - iv. Operation of Certain Network Hosting Services. Operating network Hosting Services like open proxies, open mail relays, or open recursive domain name servers.
 - v. Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a system, such as access and storage restrictions.
- h. Organization shall not provide the results of using the Hosting Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- i. Organization will not or will not attempt to modify, distribute, alter, tamper with, repair or otherwise create derivative works of any Service Provider Content included in the Hosting Services.
- j. Organization will not access the Service Provider Content or the Hosting Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.'
- k. Organization will not collect replies to messages sent from another internet service provider if those messages violate the restrictions in this Section or the acceptable use policy of that provider.
- l. Harris and/or its service provider may report any activity that they suspect violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. Such reporting may include disclosing appropriate Organization information. Harris and/or its service provider also may cooperate with appropriate law enforcement agencies, regulators, or other appropriate third parties to help with the investigation and prosecution of illegal conduct by providing network and systems information related to alleged violations of the terms of this Section 2.3.3. If Organization becomes aware of any violation of this Section 2.3.3, it agrees to immediately notify Harris and provide assistance, as requested to stop or remedy the violation.
- m. Harris may immediately suspend, restrict or limit Organization's access to all or any portion of the Hosting Services if Harris determines:
 - i. That Organization's or any of its Users' use of the Hosting Services
 - (a) poses a security risk to the Hosting Service or any third party,

- (b) poses any risk of any kind or nature to Harris’s or its service provider’s business or other customers;
- (c) could adversely impact Harris’s or its service provider’s systems, network, the Hosting Services or the systems or data of any other customer,
- (d) could subject Harris, its service provider or their respective affiliates or any third party to liability, or
- (e) could be fraudulent;
- ii. Organization or any User is in breach of this Agreement;
- iii. Organization is in breach of its payment obligations for the Annual Hosting Fees; or
- iv. Organization has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Organization’s assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding,
- n. Harris will use reasonable efforts to notify Organization of the suspension, restriction or limitation to Organization’s access to the Hosting Services. In addition to and without limiting the foregoing, Harris reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Organization in connection with its use of the Hosting Services that Harris determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Harris or its service provider’s network, business or other customers. In the event that Harris suspends Organization’s right to access or use all or any portion of the Hosting Services for a material breach of this Agreement by Organization, Organization remains responsible for all Hosting Fees incurred during the period of suspension and will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

Section 2.4 Ownership of Software and Confidential Information

- 2.4.1 The Organization acknowledges that the Software contains proprietary information and Confidential Information that is the sole property of Harris.
- 2.4.2 The Organization will take reasonable care to safeguard the Software, and at least the same care as it takes to safeguard its own similar Confidential Information.

Section 2.5 Ownership and Disposition of Documents

- 2.5.1 The parties agree that no materials or documents are being created for Organization by Harris under this Agreement. All materials and documents which were developed or prepared by Harris for general use and which are not the copyright of any other party or publicly available, including educational materials, remain the sole property of Harris.
- 2.5.2 Where the Organization requests custom materials or documents, the parties shall enter into a separate written agreement which shall include a duly executed statement of work and provisions for the license or ownership of said custom materials.

Section 2.6 Third Party Software

- 2.6.1 Harris may distribute to Organization the Third-Party Software which is described as Third Party Software in Schedule “A”. Organization shall pay for the Third-Party Software through Harris in the amount of the purchase price(s) listed along with the License Fees attached to Schedule “B”, the SOW.

Harris and/or the Third-Party Software manufacturer(s) will provide Organization with one copy of the then current user Documentation for use with the Third Party Software.

- 2.6.2 It is acknowledged by the parties hereto that the Third-Party Software provided to Organization pursuant to this Agreement was developed and delivered to Harris by one or more Third Party software companies. As such, the Third-Party Software is licensed to Organization by the applicable licensor listed in Schedule "A" and subject to the terms and conditions of the applicable license agreement for such Third-Party Software. Harris makes no warranties, express or implied, with respect to the Third-Party Software, including, without limitation, their merchantability or fitness for a particular purpose and Harris accepts no liability of any kind whatsoever with respect to the Third-Party Software. Any warranty Organization has with respect to the Third-Party Software shall be solely provided by the Third-Party Software licensor.
- 2.6.3 Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.3 and the confidentiality obligations set out herein shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.
- 2.6.4 Organization acknowledges that IBM's relevant standard licensing and use terms, as amended by IBM from time to time, apply to its use of IBM Cognos and that Organization is bound by such licensing and use terms and such terms are included in Schedule "E". The standard licensing and use terms shall include anything described as a "Licensing Information Document" by IBM and all licensing files and NOTICE files that are included with the IBM Cognos software or as may be supplied by IBM to Organization from time to time. To the extent that the terms in the Licensing Information Document or similar type documents provided by IBM differ from those in Schedule "E", the terms in the Licensing Information Document shall take precedence;
- (a) All such licenses are a restricted license, which means that the IBM Cognos software may only be used with the Software.

ARTICLE III: SERVICES

Section 3.1 Harris' Services

In order to achieve the Completion of Services, Harris agrees, subject to the terms and conditions of this Agreement, to perform the following services (the "Services") for the Organization in accordance with the relevant Statement of Work:

- 3.1.1 Oversee and implement the conversion from the Organization's existing software applications to Harris' Software.
- 3.1.2 Install the Software and perform necessary setup and configuration operations.
- 3.1.3 Provide training.
- (i) In any training class exceeding ten (10) people, Organization may be assessed an additional charge for additional instructor(s).
- (ii) Organization shall provide copies of the training manuals required for the training classes to each participant either by photocopy or electronic duplication. Each copy is subject to the restrictions and obligations contained in this Agreement.
- (iii) On-line reference Documentation is delivered with each release. Organization may print or copy this Documentation solely for its internal use.

(iv) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Organization will be billed for any non-recoverable direct costs incurred by Harris that result from a cancellation by Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Harris's then current schedule permits. Harris is not responsible for any delay in Organization's project resulting from Organization's cancellation of Services. If upon Harris arrival, the Organization has not completed required tasks for such visit, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services may be cancelled at Harris' discretion. If additional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for said Services.

3.1.4 The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of Harris in the Statement of Work are not binding on Harris and are merely provided for informational purposes; the only warranties and representations provided by Harris in respect of the Services and this Agreement are found in Article V.

Section 3.2 Performance by Harris

3.2.1 Manner of Performance -- Harris shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in their performance.

3.2.2 Harris' Discretion -- Harris shall determine in its sole discretion the manner and means by which the Services shall be performed. Harris will consult with the Organization on its methodology, manner and means.

3.2.3 Conduct on Organization's Premises -- The Services shall be performed with the Organization's full cooperation as agreed, whether on the premises of the Organization or at an alternative location. When working on the Organization's premises, Harris personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.

3.2.4 Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.

3.2.5 Independence -- As an independent consultant, Organization retains Harris and its employees and agents on an independent contractor basis and not as an employee.

3.2.6 Coordination of Services -- Harris agrees to coordinate with Organization staff in the performance of Services and to be available for consultation at all reasonable times.

Section 3.3 Performance by Organization

3.3.1 Cooperation by Organization: The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to cooperate fully with Harris to achieve the Completion of Services expeditiously.

3.3.2 Project Manager: The Organization shall designate a project manager to facilitate the successful implementation.

3.3.3 Passwords. Organization agrees to comply with all Harris security policies and procedures as provided to it and amended from time to time. Organization and its Users shall be responsible for keeping any

and all passwords, user ID's, log-in credentials and private keys assigned to its Users secret and confidential. User ID's, passwords, login-in credentials and private keys are for Organization's internal use only and Organization may not sell, transfer or sublicense them to any other entity or person except that Organization may disclose its private key to its agents performing work on its behalf. Organization agrees to notify Harris in writing if it believes that a password has been stolen or might otherwise be misused. Organization agrees to notify Harris immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Organization.

- 3.3.4 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Harris from time to time for Users; and (iii) informing Harris of any information about Users' actions that may affect either the Hosting Services or third party data contained in or used by the Hosting Services, or Harris's ability to provide the Hosting Services as contemplated by this Agreement.
- 3.3.5 Compliance with Laws. Organization represents and warrants to Harris that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- 3.3.6 Additional Organization Obligations:
- (i) For any on premises solutions, Organization shall install all Updates within a reasonable time after notification of their availability. However, any fix or correction designated as "critical" by Harris shall be implemented by Organization within thirty (30) days of such notification.
 - (ii) Organization shall notify Harris of suspected defects in any of the Software supplied by Harris. Organization shall provide, upon Harris request, additional data to reproduce the environment in which such defect occurred.
 - (iii) Organization shall allow the use of online diagnostics on the Software supplied to Organization as requested by Harris. Organization shall provide to Harris, at Organization's expense, access to the Designated Computer System via the Organization's firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
 - (iv) Organization personnel shall be educated and trained in the proper use of the Software in accordance with applicable Harris manuals and instructions.
 - (v) Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause and despite anything in this Agreement or the Statement of Work to the contrary, Harris is absolved from any requirements regarding the backup of any data. Organization shall provide Harris with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
 - (vi) Organization shall not permit any third party to have direct access to or provide services in relation to the Software or any Third-Party Software without Harris' prior written consent.
 - (vii) Organization shall have the sole responsibility for:
 - (a) the performance of any tests it deems necessary prior to the use of the Software (for on premises and hosted solutions);
 - (b) assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods (on premises solutions only);
 - (c) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction (on premises solutions only); and

- (d) timely upgrade and keeping current all third-party license releases and/or Software products to meet the requirements of the Software (on premises solutions only).

Section 3.4 Harris Obligations Specific to Any Hosting Services Purchased

- 3.4.1 Harris shall provide all facilities, equipment, and software required to make the Hosting Services available. Harris shall have the right to manage all resources used in providing the Hosting Services, as Harris deems appropriate.
- 3.4.2 Harris shall use commercially reasonable efforts to make the Hosting Services available to Users twenty-four (24) hours per day, seven (7) days per week; subject to the terms further defined in Schedule "F". Harris's liability to Organization, in the unlikely event that said Hosting Services becomes unavailable in violation of Schedule "F", shall be limited to a service credit equal to a pro-rata amount of the corresponding monthly Hosting Fee as outlined in Schedule "B"; said pro-rata amount calculated by dividing the period of unavailability by the total possible available hours in the given month. Any request for credit must be made of Harris within 15 days of the Service Interruption.
- 3.4.3 Harris reserves the right to have reasonable additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Hosting Services. Harris shall inform Organization of such criteria but Harris shall be free to implement such criteria at any time without prior written warning to the Organization and/or to Users. Where Users do not accept such and/or agree to such criteria, Harris reserves its rights to not grant to such Users access to the Hosting Services. Harris reserves its rights to restrict access to the Hosting Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software Hosting Services.
- 3.4.4 Harris shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure availability of the Software. Organization, not Harris, shall be responsible for creating and maintaining all User account information and for performing all other application-level system administration functions that are available within the Software. All of these shall form part of the Technical Services.
- 3.4.5 Organization acknowledges that in order to provide the Hosting Services Harris may be required to purchase access to the Third-Party Components. Organization further acknowledges that the availability of such Third-Party Components is based solely on the best information available to Harris and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Harris to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Harris' control, then (a) Harris shall not be in breach hereof or otherwise liable for any failure or inability to provide the Hosting Services as a result of such unavailability of any Third Party Components; and (b) Harris may in its reasonable discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components including the right to revise the Hosting Services Fee component of the Annual Subscription Fee.

Section 3.5 Organization Obligations Related to Any Hosting Services Purchased

- 3.5.1 Organization Equipment. Organization agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all

equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Organization's facilities required for Users to access and use the Hosting Services. Harris shall not be responsible for the operation of any Internet, network or other communication Hosting Services. Organization further acknowledges that access to and the operation of the Hosting Services requires Organization's and Users' hardware to be of sufficient quality, condition and repair, and Organization agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Hosting Services related to any Professional Hosting Services supplied by Harris.

- 3.5.2 Users. The Organization is responsible for: (i) the actions of Users using the Hosting Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Harris from time to time for Users; and (iii) informing Harris of any information about Users' actions that may affect either the Hosting Services or third party data contained in or used by the Hosting Services, or Harris's ability to provide the Hosting Services as contemplated by this Agreement.
- 3.5.3 Compliance with Laws. Organization represents and warrants to Harris that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including but not limited to, those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.

Section 3.6 Data Security Provisions Related to Any Hosting Services Purchased

- 3.6.1 Data Security. Organization is solely responsible for ensuring that (i) Organization's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Harris's servers; and (iii) Data is encrypted. Some content or Data may be subject to governmental regulations or may require security measures beyond those specified by Harris for an offering as set out in Schedule "G." Organization will not input or provide such content or Data unless Harris has first agreed in writing to implement additional required security measures.
- 3.6.2 HARRIS AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. HARRIS AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF ORGANIZATION'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND HARRIS SHALL NOT BE RESPONSIBLE FOR ANY USE BY ORGANIZATION OR ANY USER OF ORGANIZATION'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION. FURTHER, HARRIS DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY SERVICE PROVIDERS.

Section 3.7 Additional Hosting Provisions if Hosting Services Are Purchased

- 3.7.1 Harris currently uses AWS as an additional service provider that acts both as a hosting facility and provides additional third-party software support to Harris. The Organization acknowledges that Harris may change the third-party service provider at any time with written notice to the Organization. The Organization further acknowledges that the third-party service provider may require that the Organization agree to certain additional terms in order for Harris to allow Organization and its Users to have access to the Solution on the third-party provider's hosting platform. Harris may, from time to

time, alter the hosting facility service provider by providing written notice to the Organization. Additionally, with respect to the current third-party service provider, the Organization must agree to the following policies (“Policies”) as a condition precedent to using the Hosting Services which shall form an integral part of this Agreement. Organization agrees that its Users must also agree to such Policies, as applicable to Users:

3.7.1.1 “Acceptable Use Policy” means the policy located at <http://aws.amazon.com/aup> (and any successor or related locations designated by AWS), as it may be updated by AWS from time to time.

3.7.1.2 “Service Terms” means the rights and restrictions for particular Services located at <http://aws.amazon.com/service/terms> (and any successor or related locations designated by AWS), as may be updated by AWS from time to time.

3.7.2 The third-party service provider may change or discontinue any of the services that form part of the Hosting Services, from time to time. If Harris receives prior notice from the third-party service provider, Provider will provide prior written notice to Organization if AWS decides to discontinue a service that forms part of the Hosting Services. Harris will not be required to provide notice to Organization under this Section 2.6(b) if the discontinuation is necessary for Harris or its third-party service provider to address an emergency or threat to the security or integrity of Harris or its third-party service provider, respond to claims, litigation, or loss of license rights related to third-party intellectual property rights, or comply with the law or requests of a government entity.

3.7.3 Where a different third-party provider provides such services then alternate policies and terms will apply to Organization’s use of the Hosting and Technical Services which terms the Organization will need agree with as a condition precedent of using the Hosting and Technical Services from a time provided by Harris to the Organization.

3.7.4 Lastly, if the Organization requires information related to the third-party provider’s capabilities, accreditations, and other information regarding a third-party provider, the Organization must request such information directly from Harris. Harris will make diligent efforts to request that the third party provider provide such information for the Organization but ultimately, Harris is not obligated to provide any such information to the Organization either (i) where the third party provider refuses to provide the information to Harris or (ii) where the Organization refuses to agree to terms that the third party provider has requested from the Organization prior to providing the information either directly or indirectly through Harris (such terms, for example, an NDA).

Section 3.8 Restrictions on Use

3.8.1 Neither Organization nor any User may use the Hosting Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Organization nor any User may, or may attempt to (a) modify, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Hosting Services (except to the extent AWS Content included in the Hosting Services is provided to Organization under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the Hosting Services or apply any other process or procedure to derive the source code of any software included in the Hosting Services, (c) access or use the Hosting Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the Hosting Services.

Section 3.9 Suspension of Access and Use Rights

3.9.1 Harris may temporarily limit (in full or in part, as set forth in this Section 2.8) Organization's or any User's right to access or use the Hosting Services upon written notice to Organization (which will be reasonable prior notice unless Harris reasonably believes immediate limitation is necessary) if Harris or its third party service provider reasonably determines that Organization's or a User's use of the Hosting Services poses a security risk or threat to the function of the Hosting Services, or poses a security or liability risk or threat to Harris, AWS, either of their affiliates or any third party. Harris will only limit Organization's right to access or use the instances, data or portions of the Hosting Services that caused the security or liability risk or threat. Harris will restore Organization's access and use rights promptly after Organization has resolved the issue giving rise to the limitation. Organization remains responsible for all fees and charges for the Hosting Services and Technical Services during the period of limitation.

ARTICLE IV: SUPPORT AND MAINTENANCE

Section 4.1 Delivery of Support Services

- 4.1.1 Method of Delivery. Harris shall provide software support via telephone and electronic transmission, with site visits only when necessary. The support services will be provided during the hours of operation as described in Schedule "D" hereto, effective on the date support services fees are due, as detailed in the SOW (Schedule "B"). Such services may be modified at Harris' sole discretion, with written notice to the Organization. Organization will establish auto remote access procedures compatible with Harris' current practices.
- 4.1.2 Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
- 4.1.3 Source Code Escrow. Harris maintains an escrow agreement with a third party under which is placed the source code for each major release of its Software. Organization may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee. Organization will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Harris Software is strictly governed by the terms of the escrow agreement. No escrow in Third Party Software is provided.
- 4.1.4 Harris shall have the right to terminate ongoing Support and Maintenance pursuant to this Agreement immediately if:
- i) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with this Agreement; or
 - ii) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Section 5.1 Warranty of Performance

5.1.1 Software Warranty. The Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Completion of Services if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs

and the hardware meets the requirements. The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.

- 5.1.2 Hosting Services Warranty. During the duration of this Agreement, Harris warrants to Organization that the Hosting Services will perform substantially in accordance with the published user guides for the Hosting Services located at <http://aws.amazon.com/documentation> (and any successor or related locations designated by AWS), as such user guides may be updated by AWS from time to time.
- 5.1.3 In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by Harris, provided Organization has ongoing Support and Maintenance with Harris pursuant to Article IV of this Agreement, Harris will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of Article IV. Harris reserves the right to correct any defects about which it is made aware and to produce in its sole discretion Releases at a time of Harris' own choosing.
- 5.1.4 Harris warrants that services performed pursuant to this Agreement will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Section 5.2 Exclusions to Warranty

Harris shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Harris, including:

- 5.2.1 where the installation, integration, modification or enhancement of the Software was not done by Harris or its authorized agent, or where Organization has taken any action which is prohibited by the Documentation or this Agreement;
- 5.2.2 any use or combination of the Software with any software, equipment or services not supplied by or on behalf of Harris;
- 5.2.3 user error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted herein;
- 5.2.4 Organization's failure to install a new Update necessary to cure an error or bug, for security or legislative compliance purposes or for such other reasons as Harris may determine in its sole discretion; or
- 5.2.5 Any other event of force majeure.

Section 5.3 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED AND ALL OTHER MATERIALS AND SERVICES (INCLUDING ANY HOSTING SERVICES) ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

HARRIS DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, HARRIS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD-PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM. HARRIS AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF HARRIS.

Section 5.4 Required Programs and Hardware

- 5.4.1 The Organization acknowledges that the use of the Software may require that the Organization obtain and install additional required software programs (the “**Required Programs**”), as detailed in the attached Schedule “A”. The Organization agrees that the acquisition of the Required Programs (including the cost for future updates) shall be at its sole cost and that the cost thereof is not included in the fees herein.
- 5.4.2 Organization’s hardware shall be maintained in sufficient quality, condition and repair at Organization’s sole cost and expense to support the Software licensed and supported herein. If Harris determines that Organization’s hardware is not of sufficient quality, condition and repair, Harris shall so notify Organization, and Organization will use reasonable efforts to remedy any hardware deficiencies within thirty (30) days.
- 5.4.3 Organization shall provide no less than one hundred eight (180) days’ written notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that Harris may assess whether the Software will function with the different software or hardware. Where Harris determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization’s sole risk. Harris and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

ARTICLE VI: FEES AND PAYMENT

Section 6.1 Fees and Payments for Licenses

- 6.1.1 The Organization agrees to pay Harris total License fees detailed in Schedule “B” (the “License Fees”), which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule “B”. The License is subject to the full payment of the License fees. All payments for License fees are non-refundable.
- 6.1.2 Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this Agreement, Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule “B” to pay Harris the applicable License Fee.

Section 6.2 Fees and Payments for Services and Subscription Licenses

- 6.2.1 The Organization agrees to pay Harris total fees as delineated in the SOW (Schedule “B”). The fee structure and payment schedule for Services are outlined in the SOW (Schedule “B”). All payments for Services are non-refundable.
- 6.2.2 Annual Subscription for Subscription Licenses
 - 6.2.1.1 The Organization agrees to pay Harris the Annual Subscription Fees, which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule are outlined in the SOW (Schedule “B”). The License is subject to the full payment of the Annual Subscription Fees in accordance with the payment terms set out in SOW (Schedule “B”).
 - 6.2.1.2 The Annual Subscription Fee will be billed annually in advance beginning as set forth in the SOW (Schedule “B”) and thereafter on the anniversary or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Annual Subscription Fee to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Annual Maintenance Fee from time to time in relation to each renewal term, but Organization shall only be billed once per year.
- 6.2.2 The Organization agrees to reimburse Harris for its travel, lodging, per diem and other out of pocket expenses as set out in the attachment to the SOW (Schedule “B”).
- 6.2.3 During the term of this Agreement, Harris shall, from time to time, deliver invoices to Organization. Each invoice is due and payable in accordance with Texas Government Code Chapter 2251.
- 6.2.4 In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Harris has under this Agreement or otherwise, Harris shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any late charges.
- 6.2.5 Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in the SOW (Schedule “B”) and such sums (including the payment of the taxes) shall be payable upon receipt of invoice. Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Services, Support Services or Licenses or that are in relation to income taxes payable by Harris employees.
- 6.2.6 Change Orders. For proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof. Any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample Change Order is presented in Schedule “C”.

Section 6.3 Fees and Payments for Support and Maintenance and Any Hosting Services

- 6.3.1 In consideration for the support services provided hereunder, Organization shall pay the “Support and Maintenance Fee” and the “Annual Hosting Fees” as detailed in the SOW (Schedule “B”). The Support

and Maintenance and Annual Hosting Fees will be billed annually in advance on the due date, as detailed in the SOW (Schedule "B"), and thereafter on the anniversary of this date or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee and Annual Hosting Fees to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Support and Maintenance Fee and Hosting Services Fees prior to each renewal term, but Organization shall only be billed once per year.

- 6.3.2 In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services ("Billable Fees") pursuant to this Agreement which include:
- (i) its direct travel expenses which are excluded from the total fees amount described in the Statement of Work, including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees;
 - (ii) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;
 - (iii) a per diem rate of \$70.00 for weekdays and a \$140.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided); and
 - (iv) a mileage charge based on the current U.S. Internal Revenue Service recommended rate per mile.

Harris may update its reimbursement policies and rates related to the Billable Fees from time to time, in which case such updated policies shall apply for purposes of this Agreement, provided that such updated reimbursement policies must generally apply to all clients of Harris.

- 6.3.3 Harris shall supply all Upgrades to Organization at no additional charge other than the payment of ongoing Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris, including additional training not covered by this Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the Harris then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Statement of Work that will be subject to the terms of this Agreement.

- 6.3.4 All Updates of the Software and all those services listed in the Statement of Work which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.

- 6.3.5 All payments for Support and Maintenance and Annual Hosting Fees shall be net of any taxes, tariffs or other governmental charges. Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the sale, use or delivery of support and maintenance services shall be paid by Organization and such sums shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization.

Section 6.4 Piggyback Procurement

The Organization reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the Organization's state as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. This is conditioned upon mutual agreement of all parties pursuant to

special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this proposal and will provide usage information, which may be requested. A copy of the contract pricing and the proposal requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own Agreement with Harris, and this Agreement shall be binding only upon the principals signing such an Agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any Agreement shall be the responsibility of the participating jurisdiction or agency that entered into that Agreement. Disputes must be resolved solely between the participating agency and Harris. Organization does not assume any responsibility other than to obtain pricing for the specifications provided.

ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY

Section 7.1 Remedies and Liability

- 7.1.1 Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done prior to said termination.
- 7.1.2 The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris' liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
- (i) EXCEPT FOR DAMAGES ARISING OUT OF HARRIS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.3 OR CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, BOTH PARTIES AGREE THAT HARRIS' ENTIRE LIABILITY (UNDER CONTRACT OR IN TORT INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), IF ANY, FOR ANY DAMAGES RELATING TO OR ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE TIME THAT THE CLAIM AROSE.
 - (ii) IN ADDITION TO THE FOREGOING, EXCEPT FOR CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, HARRIS SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ORGANIZATION HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
 - (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 7.2 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person

released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 7.3 Intellectual Property Indemnity

- 7.3.1 In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trademark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. This indemnity is only effective where (i) Organization has not made any material admissions either prior to or after providing notice to Harris of the applicable claim except with Harris' prior written consent, (ii) Harris has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iii) Organization reasonably assists and provides information to Harris throughout the action or proceeding, and (iv) Organization has not modified the Software in any material manner except with the prior written consent of Harris.
- 7.3.2 Harris' liability for any claims under this Section 7.3 shall be reduced to the extent such claim arises from;
- (i) alterations or modifications to the Software by Organization in any manner whatsoever except with the prior written consent of Harris;
 - (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use;
 - (iii) use of the Software other than in compliance with this Agreement;
 - (iv) compliance with the Organization's written instructions or specifications; or
 - (v) use of the Software after notice from Harris that it should cease due to possible infringement.
- 7.3.4 The foregoing states Harris' entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trademark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- 7.3.3 Organization may, at Organization's sole cost and expense, retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances related to the proceeding.
- 7.3.4 The indemnity provisions of this Section 7.3 shall not apply to Third Party Software and Harris shall have the right to substitute the licensor of the Third-Party Software to perform Harris' obligations hereunder.

Section 7.4 Remedies

Where remedies are expressly afforded by this Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the parties arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

ARTICLE VIII: GENERAL

Section 8.1 Confidentiality

8.1.1 To the extent allowable by law and in accordance with opinions issued by the Attorney General of the State of Texas and requirements of the Texas Public Information Act, the parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, service providers, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who are bound by non-disclosure obligations at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure sufficient to allow the disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure and shall comply with any applicable protective order or equivalent. To the extent allowable by law and in accordance with opinions issued by the Attorney General of the State of Texas and requirements of the Texas Public Information Act, the parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party. All Confidential Information will remain the exclusive property of the owner.

Section 8.2 Termination

- 8.2.1 If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to
- (i) issue a written notice disputing the alleged default within such thirty (30) day period; or
 - (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, this will constitute an "Event of Default" and the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- 8.2.2 If Organization has failed to pay the license fees in accordance with Article VI, then Harris shall have the right to terminate the license rights granted herein and this Agreement effective 30 days after written notice to Organization.
- 8.2.3 Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party:
- (i) becomes insolvent;
 - (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or
 - (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 8.3 Procedure on Termination

- 8.3.1 If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to Harris or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify in writing that all of the Organization's copies of the Software have either been returned to Harris or deleted.
- 8.3.2 If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- 8.3.3 Except as otherwise set forth in this Agreement, all warranties related to the Software terminate upon the termination of this Agreement.
- 8.3.5 Termination Provisions Specific to Hosting Services. In the event of termination or expiration of Hosting Services pursuant this Agreement:
- (a) All rights to use the Hosting Services granted to Harris in this Agreement shall immediately terminate and Organization will immediately cease to perform or provide said Hosting Services.
 - (b) Organization will pay all amounts due under this Agreement for the Hosting Services up to and through the date of termination.
 - (c) Harris will furnish the Organization with a copy of Organization's Customer Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated time to provide a copy of the Customer Data are one to two days and will be billed at Harris's then current daily rate. Upon receipt of notice from Organization confirming receipt of the Customer Data, Harris shall destroy all copies of the Customer Data and delete all Customer Data on the database and an Officer of Harris shall certify the destruction and deletion to the Organization. Subject to any legal requirement that Harris must retain a copy of the Customer Data, Harris shall not delete the Customer Data for 90 days from the date of termination except: (i) where Harris has provided the Customer Data to Harris pursuant to this Subsection; or (ii) where it has received written instructions from Organization to delete the Data. Following 90 days from the date of termination if Organization has not communicated with Harris regarding the Customer Data, Harris shall have the right to delete all Customer Data at any time as either required by law or as determined by Harris in its sole discretion. Notwithstanding the foregoing, Harris shall be permitted to delete all Customer Data without providing notification to Organization and Harris shall not be required to adhere to the time frames detailed above where Harris is required by law to delete such Customer Data.
 - (d) Upon termination, Organization shall return to Harris or at Harris's option purge or destroy all copies of any Confidential Information of Harris or the third party service provider including AWS Content (other than publicly available information on the AWS Site) in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Organization confirming same within thirty (30) days.

Section 8.4 Mediation

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a

mediator appointed by mediation services mutually agreeable to the parties. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. Such mediator shall be knowledgeable in software system agreements. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Notwithstanding the foregoing, nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

Section 8.5 Addresses for Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally or mailed by prepaid registered post. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or, if mailed, on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION
Address: 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4
Attention: Leah McCallum, EVP NorthStar
Phone: 613-519-8709
Email: lmccallum@harriscomputer.com

and in the case of the Organization, to:

NEW BRAUNFELS UTILITIES
Address: 263 Main Plaza, New Braunfels, TX 78130
Attention: Greg Brown, Chief Technology Officer
Phone: 830.629.8413
Email: gbrown@nbutexas.com

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 8.5.

Section 8.6 Assignment

Neither party may assign any of its rights or duties under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, except that either party may assign to a successor entity in the event of its dissolution, acquisition, and sale of substantially all of its assets, merger or other change in legal status. The Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

Section 8.7 Reorganizations

The Organization acknowledges that the License, Services, and Support Fees set out in this Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the

Organization amalgamates, consolidates or undergoes any corporate reorganization or transition (a “Reorganization”), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Named Users or sites, Harris shall be entitled to receive, and the Organization shall pay, an additional License, Support or other fee based on the then prevailing License, Support and other Harris fee schedule in effect. The provisions of this Section 8.7 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 8.7 shall not apply where the Organization undergoes a Reorganization involving only other organizations that already have a valid License to use the same Software.

Section 8.8 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. There are no other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures. This Agreement may not be modified except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted. The parties have both had the opportunity to review this Agreement with counsel, and this Agreement shall not be construed in favor of or against either Party on account of drafting.

Section 8.9 Section Headings

Section and other headings in this Agreement are for reference purposes only and do not describe, interpret, define or limit the scope or extent of any provision hereof.

Section 8.10 Governing Law

This Agreement together with the Policies which are incorporated herein by reference shall be governed by the laws of the state of Texas without reference to the conflicts of law principles thereof. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement. Venue for any claims arising from or related to this Agreement shall be in the federal court for the Western District of Texas; provided, however, that if subject matter jurisdiction is improper in said federal court, it shall be had in the state courts for Comal County, Texas.

Section 8.11 [RESERVED]

Section 8.12 Invalidity

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant. Any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render it valid and enforceable; if such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

Section 8.13 Waiver

A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under this Agreement or by law despite such forbearance or notice.

Section 8.14 **Counterparts**

This Agreement may be executed in counterparts (whether by facsimile, via emailed PDF or otherwise), each of which shall constitute an original and all of which shall constitute one Agreement.

Section 8.15 **Further Assurances**

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate this Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary.

Section 8.16 **Allocation of Risk**

Organization acknowledges that the limited warranties, disclaimers and limitations of liability contained in this Agreement are fundamental elements of the basis of bargain between Organization and Harris and set forth an allocation of risk reflected in the fees and payments due hereunder.

Section 8.17 **Relationship**

The parties are and shall remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between them. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is in law responsible.

Section 8.18 **Trade Compliance**

In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Organization is solely responsible for compliance with applicable laws related to the manner in which Organization chooses to use the Hosting Services, including (i) Organization's transfer and processing of Data, (ii) the provision of Data to Users, and (iii) specifying the AWS region in which any of the foregoing occur. Organization represents that Organization and the entities that own or control Organization, and the financial institutions used to pay Provider under this Agreement, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

Section 8.19 **U.S. Government End-Users**

The Software (i) was developed exclusively at private expense; (ii) is a trade secret of Harris for the purposes of the Freedom of Information Act; (iii) is “commercial computer software” subject to limited utilization (Restricted Rights); and (iv) including all copies of the Software, in all respects is and shall remain proprietary to Harris or its licensors. Use, duplication or disclosure by the U.S. Government or any person or entity acting on its behalf is subject to restrictions for software developed exclusively at private expense as set forth in: (i) for the DoD, the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or 252.227.7014 or any successor clause, and (ii) for all government agencies, the Commercial Computer Software – Restricted Rights clause at FAR 52.227-19 or any successor clause. The U.S. Government must refrain from changing or removing any insignia or lettering from the Software or from producing copies of the Software and manuals (except one copy of the Software for backup purposes). Use of the Software shall be limited to the facility for which it was acquired. All other U.S. Government personnel using the Software are hereby on notice that use of the Software is subject to restrictions that are the same as, or similar to, those specified above. The manufacturer/owner is N. Harris Computer Corporation, 1 Antares Drive, Suite 400, Ottawa, ON K2E 8C4.

Section 8.20 Language

The parties confirm that it is their wish that this Agreement, as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

Section 8.21 Force Majeure

No default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 8.22 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Article II, Article V, Article VII, and Article VIII and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement to be effective as of the Effective Date.

N. HARRIS COMPUTER CORPORATION

Per:

Name:

Title:

Date:

NEW BRAUNFELS UTILITIES

Per:

Name: Ian Taylor

Title: CEO

Date:

Schedule "A" - Description of Software

Please refer to the Statement of Work (SOW) provided under separate cover.

Schedule “B” – Statement of Work (“SOW”)

Please refer to the Statement of Work (SOW) provided under separate cover.

Schedule "C" – Sample Change Order Form

NORTHSTAR IMPLEMENTATION PROJECT - CHANGE ORDER REQUEST FORM

ORGANIZATION NAME: NEW BRAUNFELS UTILITIES

Vendor: NorthStar Utilities Solutions; a Division of Harris Computer Systems

Date:

Change Order Number:

Project Description: NBU, NorthStar CIS Implementation

Requested By:

Scope of Change Requested:

Assumptions and Other Requirements:

Payment Terms:

Start Date:

Cost Impact:

A signature below will serve as authorization to proceed with this change order. Please sign and return to NSProjectManager@northstarutilities.com

Approval (signature and date):

Organization Approval _____

Organization Project Manager _____

NorthStar Utilities Solutions Project Manager _____

Change is **Approved** **Denied** **Date** _____

Schedule “D” – Standard Support and Maintenance Guidelines

Help Desk Hours

Standard hours are from 8:00 am to 8:00 pm EST Monday through Friday, excluding designated statutory holidays. Customer requested Support is available outside of standard hours and is billable on an hourly basis (minimum number of hours will apply) at a rate of \$338/hr. Weekend assistance is available and must be scheduled in advance (and is billable on an hourly basis with a minimum number of hours that apply).

Holiday Schedule

NorthStar Support Services will be closed on the Canadian and US statutory holidays below. Support will be available on all Canadian statutory holidays when there is no US corresponding statutory holiday.

New Year’s Eve	Early Closure
New Year’s Day	Closed
Labor Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
Boxing Day	Early Closure

Customer Care Program

- Technical Support Bulletins
- Communication on new products and services
- Dedicated Customer Support Account Lead as first point of contact as required
- Participation in Regional User Group Meetings
- Participation in NorthStar Webinars
- Opportunity to take part in validation and focus groups
- Opportunity to take part in Harris Annual Customer Conference

“Software for Life” Guarantee

- Support on existing Harris software applications for life
 - Products reach the end of their product life cycle for a number of reasons. These reasons include market demands, technology innovation and development driving changes, or the products simply mature over time and are replaced by functionally richer technology. If NorthStar determines a product to be end of support we will ensure the existing product software license grants access to new platforms within the same product class.
- Software transferability and cost effective upgrades

TeamSupport Access 24/7

- Open new tickets
- View open/closed tickets for your organization
- Post Screen Recordings and Video Recordings to tickets
- View Knowledge Base Articles

- View Product Information
- Report on Ticket Metrics
- Find out the latest NorthStar News; Events; Product Releases

Ticket Priorities

In an effort to assign our resources to incoming tickets as effectively as possible, NorthStar has identified four types of ticket priorities P0, P1, P2 and P3.

PRIORITY 0 - PRODUCTION DOWN
<i>Deemed by NorthStar Team to be Extremely High Priority (Production Only)</i>
Production Down
Complete loss of service
PRIORITY 1 - BUSINESS CRITICAL
<i>Deemed by NorthStar Team to be of high priority as NO workaround exists</i>
Performance issue impacting critical processes
No workaround exists
Examples: Inability to create bills
PRIORITY 2 - MEDIUM TO HIGH BUSINESS IMPACT
<i>Deemed by NorthStar Team to be important; however, workarounds are available</i>
State of Degraded Performance
Workaround exists.
Examples: usability issues; non-critical performance issue; calculation issues
PRIORITY 3 - MINIMAL BUSINESS IMPACT/REQUESTS
<i>Deemed by NorthStar Team to be more general/cosmetic in nature OR Scheduled</i>
Minimal Business Impact
General Product Issues/Questions/Aesthetic Issues/Formatting Issues/Questions on Documentation
Enhancement Requests/Requests for Statement of Work/To be Scheduled items

NOTE: NorthStar reserves the right to reclassify the priority level at any time if we reasonably believe the classification is incorrect.

Response Times

Response times will vary and are dependent on the priority of the call. We do our best to ensure that we deal with incoming cases in the order that they are received; however, cases will be escalated based on the urgency of the issue reported.

NorthStar’s standard response times are as follows:

Priority 0	Response within 2 business hours
Priority 1	Response within 4 business hours
Priority 2	Response within 8 business hours
Priority 3	Response within 24 hours

Standard Software Releases and Updates

- Defect corrections
- Planned enhancements
- Payroll regulated changes (additional charges may apply)
- Participation in BETA program
- Release notes
- State, Province and/or Federal mandated changes (additional charges apply)

Scheduled Assistance for Updates During Regular Business Hours

- Additional charges apply outside of regular business hours.
- Charges may apply depending on scope of work.

Third Party Support

Standard Third Party Support and Maintenance Services are provided, for those clients with maintenance on 3rd party products, based on the descriptions below. NorthStar provides 1st line support for all 3rd party products listed below and will escalate to the vendor if required. Please note that 3rd party installations & preventative maintenance services are not included as part of your maintenance unless otherwise indicated below.

Microsoft SQL Server

- Initial SQL Server installation & configuration
- Establish database connections to NorthStar database
- Limited troubleshooting and/or repair of database related issues

4Js (3rd Party graphical user interface software)

- Entitlement to new GUI software releases
- Installation and configuration for test and live NorthStar environments
- Limited troubleshooting and/or repair of database related issues

BitStew (As part of the CustomerConnect web portal)

- Installation & configuration for test and live CustomerConnect environments

IBM Cognos (as part of the Reports Anywhere reporting solutions)

- Initial installation & configuration of IBM Cognos for use with Reports Anywhere
- Set up of IBM Cognos license/establishment of connections with the NorthStar software
- Limited assistance in utilizing embedded report writer functionality.
- Updates to IBM Cognos data model which reflect changes in NorthStar database schema due to upgrades
- Limited assistance in locating information within the IBM Cognos data model
- Assistance with existing reports

NOTE: NorthStar recommends Microsoft SQL Server and supports Microsoft supported versions of the SQL database. Those versions of SQL Server that are no longer supported by Microsoft should no longer be considered supported by NorthStar.

Billable Support Services

The list below are deemed to be out of scope from our standard Annual Maintenance and Support Agreement. These items may be optionally available as billable services and includes, but may not be limited to;

- Post Go-Live Training
- Post Go-Live Project management
- Form creation and redesign
- Handheld interface of new interface, setups and changes
- Setup of new services or changes to services (PAP, ACH, etc)
- File imports and exports and interfaces to other applications
- Refresh backups, restores, setting up test areas
- Setup of new printers, printer setup changes
- Custom modifications (reports bills, forms, reversal of customizations)
- Setting up additional companies/agencies/tokens/general ledgers
- Data conversions and global modification to setup table data
- Database maintenance, repairs and optimization (unless specifically listed as a Support deliverable)
- Extended hardware and operating system support
- Upgrades and support of third party software
- Installations and re-installations (workstations, servers)
- Creation of Test databases and environments

NOTE: Modifications to data in the NorthStar database via non-sanctioned NorthStar solutions or partner solutions are strictly prohibited and not supported.

Test Databases & Environments

NorthStar recommends that customers maintain an independent Test environment for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the Production (Live) environment. The creation of additional Test databases & environments is a billable service, if performed by NorthStar Support post Go-Live.

Connection Information

1. Direct Tunnel
2. VPN - Example:
 - a. Cisco Any Connect
 - b. Microsoft VPN
 - c. FortiClient
 - d. SonicWall Net Extender
 - e. Bomgar
 - f. Global Protect
 - g. Zywall
3. Web:
 - a. Citrix
 - b. Bomgar Web
 - c. Beyond Trust
 - d. CyberArk
4. Customer controlled connections:
 - a. WebEx
 - b. GoToMyPC

How to Contact Us

Existing customers can login to our Customer Hub at:

<https://northstarutilitiesolutions.na2.teamsupport.com/login/user>

Contacts for Escalations

1. Dawn Ivanochko
Director, Support Services
1-888-847-7747 X2032
DIvanochko@harriscomputer.com
2. Diane Vieson
Manager, Support Services
1-888-847-7747 X2012
DVieson@harriscomputer.com
3. Jackie Hunter
Manager, Support Services
1-888-847-7747 X2038
JHunter2@harriscomputer.com
4. Karen McKernan
Vice President, Support Services
1-888-847-7747 X2744
KMckernan@harriscomputer.com

Standard Technical Services for Hosted Environments

Service	Activity	Description	Frequency
Database	Logging Management	This is the required management of the transaction log space.	Scheduled
Database	Temporary Space Management	This service is to ensure that the MS SQL Server temporary space has the adequate resources as the system is used and the database grows in size.	Scheduled
Database	Backup Routine Management	This service is to ensure that the appropriate drives & files are backed up accordingly in the event restores or recovery is required.	Scheduled
Database	Backup Routine Confirmation	This service is to provide notifications on the success and failure of the database backup routines.	Scheduled
Database	Index Defragmentation	This is a weekly rebuild off all of the indexes to manage database fragmentation to prevent performance issues.	Weekly
Database	Integrity Validation	This routine checks the validation of table & index consistency, system catalogs, and allocated structures. The routine will attempt to repair any issues discovered.	Weekly
Database	Statistic Updates	The update statistics plan will ensure that metrics on the data count and distribution within a column or columns used by the database optimizer are kept up to date for query efficiency.	Weekly
Database	Patch Management	As MS SQL patches are released by Microsoft they will be reviewed and applied as required.	Monthly
Database	Recovery	In the event the database has to be restored or recovered Harris will perform the necessary tasks.	As Required
Database	Test Database Refresh	Refreshing Test environment	Quarterly

Database	Archive/Purge	Configure a new archive database and put processes in place to archive application information into this new database. As of a user defined date.	Up to Semi-Annually
Operating System	Patch Management	As MS Server patches are released by Microsoft they will be reviewed and applied as required.	Monthly
Operating System	File System Maintenance	This task is to manage the file system to ensure system drives do not become full and have appropriate resources allocated.	Weekly
Operating System	Printer Administration on the TM Server	As new servers are added within your physical location they will need to be added or managed on the Terminal Server within the hosted environment..	As Required
Operating System	Backup Routine Management	This service is to ensure that the appropriate drives & files are being backed up accordingly in the event restores or recovery is required.	Scheduled
Operating System	Backup Routine Confirmation	This service is to provide notifications on the success/failure of the system backup outlines	Scheduled
Operating System	Backup Routine Validation	This routine will be a manual extraction and review of the backup files for validation of content and an integrity check on the files	Monthly
Administration	Logging, Monitoring, and Trending Administration	Provide the platform to supply service and component- level monitoring for applications and service. We will provide end user experience monitoring of a service as well as component layer monitoring, log aggregation, and alerting services tailored to your specific needs.	As Required

Schedule “E” – Third Party Software Licenses and Third Party Software Terms

THIRD PARTY SOFTWARE LICENSES FOR COGNOS

For the purposes of this Agreement, “Third Party Software” is considered to be the IBM/Cognos (“Cognos”_ sold by NorthStar as OEM partner of IBM/Cognos and which is further defined below.

COGNOS END-USER LICENSE TERMS

IMPORTANT READ CAREFULLY: You have installed, accessed or downloaded a Cognos software product (“Software”). Your use of this product is governed by the following terms. You can agree to those terms by clicking on the boxes indicated below. If you do not agree with them, click on the appropriate box.

All references to COGNOS are to COGNOS INCORPORATED and its authorized subsidiaries and distributors worldwide. For more information concerning COGNOS contact the organization providing you with this software or visit the COGNOS website at www.cognos.com.

1. GENERAL - These terms govern the license by you of this COGNOS Software program, including all related user manuals and documentation, whether provided to you in physical or electronic form.
2. LICENSE- COGNOS grants you a non-exclusive, non-transferable license to use the Software for the purpose(s) for which it was provided to you. Any upgrade or new release of the Software is also subject to the provisions of this Agreement. You will not distribute or make the Software available to any other party.
3. SUPPORT - Support is available through the organization that provided you with the Software.
4. PROPRIETARY RIGHTS - All title in and rights to the Software (including any copyrights) remains exclusively with COGNOS. The rights of COGNOS are protected by local laws and International treaties. You will not decompile, disassemble or otherwise reverse engineer the Software.
5. WARRANTY - COGNOS warrants that: (a) for a period of thirty (30) days following the initial delivery/download/access of the Software, or of any new release of the Software, to or by you, the Software will perform in conformity with its related documentation, and (b) the media on which the Software is provided, if applicable, is free from defects in materials and workmanship under normal use. Subject to applicable law, all other warranties or conditions express, implied, or otherwise, are excluded. Your only remedy against COGNOS if this warranty is breached will be, at the option of COGNOS: (a) to repair or replace the Software or (b) to refund the amounts paid in respect of the defective Software. This remedy is void if you misuse the Software contrary to its related documentation.
6. LIMITATION OF LIABILITY - COGNOS will not be liable to you for any special, indirect, incidental, consequential or exemplary damages, including costs or legal expenses, in connection with the supply, use of performance of the Software, even if it is aware of the possibility of the occurrence of such damages. In certain jurisdictions the foregoing limitation may not be effective, in which case the applicable law will prevail.

7. INTELLECTUAL PROPERTY INDEMNIFICATION - COGNOS will indemnify, defend and hold you harmless against any claims, legal actions, losses and other expenses arising out of or in connection with any claims that the Software infringes or violates any intellectual property right of any third party (“Claim”), on the condition that COGNOS has sole control of the defense and negotiations for its settlement or compromise. The sole obligation of COGNOS to you in this regard will be to (a) obtain for you the right to use the Software, or (b) replace or modify such Software so that it is no longer subject to a Claim, but performs the same functions in an equivalent manner.

8. TERMINATION - If you breach any of these terms, COGNOS may terminate your license to use the Software and on receipt of notice to that effect from COGNOS, you will destroy all copies of the software in your possession and purge it from your system.

9. EXPORT CONTROLS – The Software may not be downloaded, transmitted or otherwise exported or re-exported except in compliance with applicable statutes or regulations relating to the country of destination, or to the users or the use of the Software. By downloading or using this Software you are representing and warranting that you are not located in, under the control of, or a national or resident of any such embargoed country or on any such denial list. In addition, you are responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law.

10. U.S. GOVERNMENT RESTRICTED RIGHTS - The Software provided to the government of the United States of America, its agencies or instrumentalities (“U.S. Government”) is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to the restrictions in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48CFR52.227-19, as amended or applicable, or such other applicable rules and regulations that provide COGNOS with the same or greater protection. The manufacturer of the Software is Cognos Incorporated, 3755 Riverside Dr., Ontario, Canada.

11. APPLICABLE LAW - This Agreement, and any matters relating to it, will be governed, construed and interpreted in accordance with the local laws applicable where you are located.

If you have any questions regarding this License or the Software, please contact the Cognos office nearest you.

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Cognos Incorporated
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Cognos Pty. Limited
110 Pacific Highway, 3rd Floor, St. Leonards, NSW 2065, Australia

Schedule “F” – Service Availability

Availability and Uptime Objectives:

Availability of the Software Hosting Services is defined as when the Software Hosting Services are operational and accessible via a public internet connection. NorthStar shall strive to make the Software Hosting Services available 100% of the time. However, the Software Hosting Services may be unavailable during certain downtimes. NorthStar shall not be responsible for any failure to make the Software Hosting Services available under the following circumstances:

- i. Routine scheduled downtime: Periods of time for the purpose of conducting routine system maintenance. In such event, NorthStar shall use commercially reasonable efforts to provide Customer with a minimum of three (3) business days prior to any period of scheduled downtime, and shall use commercially reasonable efforts to limit any such routine system maintenance to weekends between the hours of midnight and 6 AM ET.
- ii. Emergencies: NorthStar reserves the right to suspend the Software Hosting Services and Customer’s access to the Software Hosting Services in the event of an emergency or other non-routine maintenance event wherein it is deemed appropriate by NorthStar, without prior notice to Customer, to address a critical system issue. In such event, NorthStar will use commercially reasonable efforts to notify Customer of such suspended access as soon as possible and to restore access the system as soon as practically feasible.
- iii. Customer’s network infrastructure: Customer’s network infrastructure (equipment, software or other technology) is failing or causing the Software Service to be unavailable. This includes Customer’s connection to the Internet or an Internet failure beyond the control of NorthStar.
- iv. A breach of the Agreement by Customer, its employees, subcontractors or agents (“Customer Representatives”).
- v. An error or the negligence or intentional acts or omissions of Customer Representatives or Users.
- vi. Unforeseen capacity increases based on changes in Customer’s business processes or methods.
- vii. Any other force majeure event, as set out in Section 8.21 of the Agreement.

Schedule “G” – Security

1. Without limiting your obligations under the Agreement, NorthStar shall store and process data in accordance with industry standard practices.
2. Response to Legal Orders, Demands or Requests for data.
 - a. Where permitted by law NorthStar shall:
 - i. Promptly notify the Customer of any subpoenas, warrants, or other legal orders, demands or requests received by NorthStar seeking Data;
 - ii. Consult with the Customer regarding its response;
 - iii. Cooperate with the Customer’s reasonable requests, at Customer’s expense, in connection with efforts by the Customer to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the Customer’s request, provide the Customer with a copy of its response.
 - b. If the Customer receives a subpoena, warrant, or other legal order, demand (“requests”) or request seeking Data maintained by NorthStar, Customer will promptly provide a copy of the request to NorthStar. NorthStar will, where permitted by law, promptly supply Customer with copies of records or information required for the Customer to respond, and will cooperate with Customer’s reasonable requests, and at Customer’s expense, in connection with its response.