

Master Agreement  
Software License, Services, and Support and  
Maintenance Agreement (Contract # K-2324-37)

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## Master Agreement Terms and Conditions

**THIS MASTER SOFTWARE LICENSE, SERVICES and SUPPORT AND MAINTENANCE AGREEMENT (the “Agreement”)** made as of the \_\_\_ day of \_\_, \_\_\_\_\_ (the “Effective Date”).

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

- and -

The Norman Utilities Authority (“Organization”)

**WHEREAS**, the Organization wishes to acquire a license to utilize the Software and Sublicensed Software; to obtain certain related Professional Services; and Support and Maintenance Services for the Software and Sublicensed-Software from Harris; and

**WHEREAS**, Harris has agreed to grant the Organization a license to utilize certain Software and Sublicensed Software; to provide certain related services to Organization, including Professional Services, Support and Maintenance Services, and optional dedicated hosting services for the Software and Sublicensed Software, on the terms and conditions of this Agreement.

**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 **“Change Order(s)”** means any duly executed change order between Organization and Harris evidencing their agreement to add, subtract or change particular aspects of the Professional Services or the Support and Maintenance Services.
- 1.1.2 **“CIS Infinity Software”** means the object code version of the CIS Infinity Software product listed in Schedule “A” and includes any Update(s) or Upgrade(s) to the CIS Infinity Software that have been provided to Organization.
- 1.1.3 **“Completion of Services”** means that the Software and Sublicensed Software is operational and performing substantially 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 and Sublicensed Software as its predominant business system.
- 1.1.4 **“Concurrent Users”** means the total number of Users who can simultaneously access the Software at any one time as specified in Schedule “A”.
- 1.1.5 **“Confidential Information”** means the Software, Sublicensed Software, Infinity FWM Software, and all information or material that is confidential in nature or that either party treats as confidential and any information relating to third parties that a party has an obligation to treat as confidential, which is disclosed by or obtained by a party in connection with this Agreement, whether such information is in oral, written, graphic, or electronic form, and 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..

- 1.1.6 **“Customer Engagement Portal Terms”** means the terms and conditions for the Infinity Customer Engagement Portal to be entered into between Organization and its customers as set out at the [Organization website] that must contain terms and conditions that are at least as protective of Harris, and its rights in and to the Infinity CEP Software as the terms and conditions of this Agreement and which must contain the Minimum Terms.
- 1.1.7 **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Infinity CIS Software regardless of the media on which it is provided. Documentation specifically excludes any materials pertaining to Third Party Software.
- 1.1.8 **“Fees”** means the License Fees, Subscription Fees, Professional Services Fees, Support and Maintenance Fee and any other applicable fees that are set out in this Agreement.
- 1.1.9 **“Hosting Services”** means where applicable the web-based services to be provided by or on behalf of Harris to host, monitor, and operate the Software and Sublicensed Software on hardware and related equipment at a site owned or controlled by Harris’ service providers and the delivery of exclusive access via the Internet to the Organization to use the Software and Sublicensed Software granted to Licensee pursuant to Section 2 hereof. The Hosting Services shall also include storing all data entered and maintained by Users that have been authorized by the Organization in writing to access and use the Software and Sublicensed Software solely for Organization’s internal use up to the Data Storage Limit and Data Export Limit (as those terms are defined in Schedule “F”).
- 1.1.10 **“Infinity Customer Engagement Portal”** or **“Infinity CEP”** means the Silverblaze self-service customer engagement portal that forms part of the Infinity CEP Software and which can be configured by the User authorized by the Organization to perform administrative level functions to allow customers of Organization access via the Organization’s website to check account details and log requests for service.
- 1.1.11 **“Infinity CEP Documentation”** means the user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Infinity CEP Software regardless of the media on which it is provided.
- 1.1.12 **“Infinity CEP Software”** or **“Silverblaze Software”** means the object code version of the Silverblaze software products where listed in Schedule “A” and includes any Updates or Upgrades to the Infinity CEP Software that have been provided to Organization as part of Support and Maintenance Services. Third Party Software is not included in the definition of Infinity CEP Software.
- 1.1.13 **“Infinity FWM Documentation”** means the user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Infinity FWM Software regardless of the media on which it is provided.
- 1.1.14 **“Infinity FWM Software”** or **“Infinity FWM”** means the object code version of the Harris field work management software product known as Infinity FWM listed in Schedule “A” and includes any Updates or Upgrades to the Infinity FWM that have been provided to Organization as part of Support and Maintenance Services.
- 1.1.15 **“Intellectual Property Rights”** means any proprietary right including, but not limited to, those

provided under: (a) patent law; (b) copyright law; (c) trade-mark law; (e) design patent or industrial design law; or (d) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how.

- 1.1.16 **“License”** means the license rights granted to the Organization pursuant to Article II of this Agreement.
- 1.1.17 **“License Fees”** means the fees set out in Schedule “A” for the license rights granted pursuant to Section 2.1.1.
- 1.1.18 **“Maximum Accounts”** means the maximum number of accounts for which Organization is authorized to use the Infinity CIS Software and Infinity FWM Software as specified in Schedule “A”, with an account being identified as a discreet address.
- 1.1.19 **“Maximum Meters”** means the maximum number of meters with which Organization is authorized to use the Infinity CEP Software as specified in Schedule “A”.
- 1.1.20 **“Minimum Terms”** means the following Sections of this Agreement: Sections 1.1.5, 2.3, 2.4, the terms of Section 5.3 as modified to remove the words “except for the express limited warranties set out in Section 5.1”, Section 8.1, and the following language; “TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HARRIS, ITS LICENSORS, SERVICE PROVIDERS, AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER (INCLUDING FOR LOSS OF REVENUE, LOST OR DAMAGED DATA OR OTHER ECONOMIC LOSS) ARISING OUT OF OR IN CONNECTION WITH THE USE OR INABILITY TO USE THE INFINITY CUSTOMER ENGAGEMENT PORTAL, WHETHER IN CONTRACT OR IN TORT (INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE) OR UNDER ANY OTHER LEGAL THEORY, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE LOSS OR DAMAGE OR SUCH LOSS OR DAMAGE IS FORSEEABLE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY”.
- 1.1.21 **“Named Users”** means those specific individuals who have been specifically named in a written document approved by Harris, such approval not to be unreasonably withheld, as such document may be amended from time to time upon prior written approval of Harris.
- 1.1.22 **“Professional Services”** has the meaning given to it by Section 3.1.
- 1.1.23 **“Professional Services Fees”** means the fees set out in Schedule “A” for the Professional Services.
- 1.1.24 **“Release”** means an Update and an Upgrade. **“Reseller”** means Thirkettle Corporation dba Utiliuse,
- 1.1.25 **“Reseller Agreement”** means the reseller agreement executed by Harris and Reseller.
- 1.1.26 **“Silverblaze”** means the Silverblaze business unit of Harris.
- 1.1.27 **“Software”** means the Harris software products that are listed in Schedule “A” comprised of any one or all of the following software products: Infinity CIS Software, the Infinity CEP Software, and/or the Infinity FWM Software and includes any Updates or Upgrades to such Harris software products that have been provided to Organization as part of Support and Maintenance Services. Third Party Software and Sublicensed Software is not included in the definition of Software.
- 1.1.28 **“SOW”** or **“Statement of Work”** means a written statement of work executed by an authorized representative of each of the parties and is either attached to this Agreement as Schedule “A”; or (b) in the form attached as Schedule “A” or such other future written statement of work agreed to by the parties which references and is governed by this Agreement, or such other written statement of work which references and is governed by the Reseller Agreement.
- 1.1.29 **“Start Date”** shall have the meaning set out in Section 4.1.1.
- 1.1.30 **“Subscription Fees”** means the fees set out in Schedule “A” for the license rights granted in Section 2.1.2 for the Subscription Term.
- 1.1.31 **“Subscription Term”** means the period of time specified in Schedule “A”.

- 1.1.32 **“Sublicensed Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Sublicensed Software regardless of the media on which it is provided.
- 1.1.33 **“Sublicensed Software”** means the object code version of the software product listed in Schedule “A” (and identified as Sublicensed Software in Schedule “A” or such subsequent product name adopted by Harris and identified to Organization in a written notice from Harris) and includes any Updates or Upgrades to the Sublicensed Software that have been provided to Organization as part of Support and Maintenance Services.
- 1.1.34 **“Support and Maintenance Fee”** means the fee to be paid by Organization for Support and Maintenance Services as set out in Schedule “A”.
- 1.1.35 **“Support and Maintenance Services”** means the maintenance and support services to be provided by Harris pursuant that are detailed in Schedule “D”.
- 1.1.36 **“Third Party Software”** means any third-party software product (including any related materials, information and documents) 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 Schedule “E” shall be amended to include additional Third Party Terms as applicable.
- 1.1.37 **“Third Party Terms”** means the terms and conditions that apply to licensing or access and use of the Third Party Software that are either listed or included in Schedule “E” and as such terms and conditions may be revised from time to time.
- 1.1.38 **“Update”** means any published changes, additions or corrections to the applicable software that primarily include a minor modification or enhancement to the applicable 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).
- 1.1.39 **“Upgrade”** is a major overhaul of the applicable software which is a complete new published version of the applicable software that modifies, revises or alters the applicable software and adds features, functionality or enhancements to such applicable 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).
- 1.1.40 **“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 and Sublicensed Software by way of any type of interface (for example, graphical user interface or browser user interface).

## **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, License Granted, and Fees

Schedule "B" - Statement of Work ("SOW") with attached

- Fee Structure and Payment Schedule for Consulting Services [**INTENTIONALLY OMITTED**]

Schedule "C" - Sample Change Order Form

Schedule "D" - Standard Support and Maintenance Guidelines

Schedule "E" – Third Party Software Terms and Conditions

Schedule "F" – Optional Harris Hosting Services Agreement

In the event of a conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in Schedules "A", "B", "C", "D" and "E", the terms and conditions of the main body of this Agreement shall control unless otherwise expressly stated in the provision giving rise to the conflict or inconsistency. In the event of a conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in Schedules "F", the terms and conditions of Schedule "F" shall control.

## **ARTICLE II: SOFTWARE LICENSE**

### **Section 2.1**     **License**

2.1.1 **Grant.** 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, perpetual (subject to termination in accordance with Section 8), limited right and license to:

- (i) install and allow the maximum number of Concurrent Users to use the Infinity CIS Software up to the Maximum Accounts solely for Organization's internal business purposes;
- (ii) install and allow the maximum number of Named Users specified in Schedule "A" to access and use the Infinity FWM Software and Sublicensed Software up to the Maximum Accounts solely for Organization's internal business purposes;
- (iii) copy the Infinity CIS Software and Sublicensed Software provided that Organization agrees that the original copy of the Infinity CIS Software, Infinity FWM Software and Sublicensed Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris or its licensors and provided further that all copyright notices and other proprietary markings are retained on all such copies;
- (v) to install and use the Infinity CIS Software on a reasonable number of non-production environments for Organization's performance testing, disaster recovery, disaster testing, training, archival and backup purposes;
- (vi) to make a reasonable number of copies of the Infinity FWM Software and Sublicensed Software on non-production environments for Organization's archival and backup purposes;
- (vii) to use, and copy the Infinity FWM Documentation and Sublicensed Documentation for Organization's internal business purposes, provided that Organization shall reproduce and include any copyright, trade secret notices and other proprietary markings are retained on any such copies; and
- (viii) to use, copy and modify the Documentation for the purpose of creating and using training materials relating to the CIS Infinity Software which may include flow diagrams, system operation

schematics, and/or screen shots, provided that all required copyright notices and other proprietary markings are retained on all copies.

- 2.1.2 **Grant.** Subject to the terms and conditions of this Agreement, including without limitation the payment of the Subscription Fees, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable, limited right and license during the Subscription Term to:
- (i) install and allow Users to use the Infinity CEP Software up to the Maximum Meters solely for Organization's internal business purposes;
  - (ii) copy the Infinity CEP Software provided that Organization agrees that the original copy of the Infinity CEP Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris and Organization shall not remove, alter, obscure any copyright or other proprietary markings of Harris or its licensors;
  - (iii) to authorize Organization's customers to access and use the Infinity Customer Engagement Portal provided such customers agree to be bound by the Customer Engagement Portal Terms; (iv) to make a reasonable number of copies of the Infinity CEP Software on non-production environments for Organization's archival and backup purposes; and
  - (iv) to use, and copy the Infinity CEP Documentation for Organization's internal business purposes, provided that Organization shall reproduce and include any copyright, trade secret notices and other proprietary markings are retained on any such copies.
- 2.1.3 **Use by Independent Contractors.** Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section 2.1 so long as: (a) any such independent contractors are bound by obligations of confidentiality at least as protective of Harris' Confidential Information, and terms and conditions at least as protective of Harris' rights in and to the Software, as the terms and conditions of this Agreement; and (b) such independent contractors have been approved by Harris in its sole discretion in advance of the independent's contractors' access to the Software. Organization shall be responsible for (a) all of the actions of, and (b) any misuse or appropriation of the Software by any independent contractor.
- 2.1.4 The parties may, by written agreement, amend Schedule "A" from time to time to allow for additional Concurrent Users or additional Named Users, as required at Harris' then current prices and terms.
- 2.1.5 Organization acknowledges and agrees that any breach of this Agreement by its Users or customers shall constitute a breach by Organization.
- 2.1.6 **Infinity Customer Engagement Portal.** In the event that Organization decides to configure the Infinity CEP Software to enable access to the Infinity Customer Engagement Portal by Organization's customers, Organization shall comply with all laws, rules and regulations applicable to the use of the Infinity Customer Engagement Portal including, without limitation, those laws regarding privacy and data security. Without limiting the generality of the foregoing, Organization shall:
- (i) be solely responsible for ensuring appropriate security and privacy measures are put in place to secure the Infinity Customer Engagement Portal from unauthorized access and use including without limitation requiring all customers to set up a password and login in order to access the Infinity Customer Engagement Portal and shall require all such customers to keep such password information confidential and secure;



(ii) limit access by each customer of Organization solely to information regarding the particular customer's accounts; and

(iii) ensure that all credentials used by customers of Organization to access the Infinity Customer Engagement Portal are time limited and will expire when no longer reasonably necessary.

**2.1.7 Publication of Data.** Organization assumes all risks associated with enabling access to the Infinity Customer Engagement Portal to third parties and to the use of web enabled access to the Infinity CEP Software, whether such access is made available from within Organization's firewall or via the Internet. Organization agrees to defend, indemnify and hold harmless Harris, its licensors, service providers, affiliates and each of their respective officers, directors, employees, and agents (the "**Indemnities**") from and against all losses, costs, damages, liabilities, and expenses (including reasonable attorney's fees) incurred by the Indemnities in any claim, action, suit or proceeding arising out of or in connection with the use of the Infinity Customer Engagement Portal, web based features or portions of the Infinity CEP Software, and/or any website operated by or on behalf of Organization that displays any part of the Infinity CEP Software and the publication, display and use of the information and data described and/or contained on the Infinity Customer Engagement Portal, web based features or portions of the Infinity CEP Software, or such website, including but not limited to any claim with respect to any improper or incorrect use of the information or any defamatory, offensive, or other illegal conduct of users or third parties.

## **Section 2.2 Term**

This Agreement commences on the Effective Date and shall continue to be in force unless and until terminated pursuant to the terms hereof.

## **Section 2.3 Restrictions on Use**

Without limiting the generality of the License granted in Section 2.1 and any other restrictions listed in this Agreement:

**2.3.1** Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software or Sublicensed 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 Sublicensed Software, or otherwise attempt to reconstruct or discover the source code of the Software or Sublicensed Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivative works of the Software or Sublicensed Software or merge all or any part of the Software or Sublicensed Software with any other program; (iv) rent, lease, lend, distribute, transfer, sell, pledge, assign, or otherwise transfer the Software or Sublicensed Software; (v) use the Software or Sublicensed Software for time-sharing or bureau use, or to publish or host the Software or Sublicensed Software for others to use (except the limited right to permit Organization's customers to access and use the Infinity Customer Engagement Portal in accordance with this Agreement); or (vi) knowingly take any actions that would cause the Software or Sublicensed Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to Harris for any misuse of the Software or Sublicensed Software.



**Section 2.4 Ownership of Software and Confidential Information**

- 2.4.1 The Software, Sublicensed Software, related materials, and any Third Party Software supplied by Harris are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software and Sublicensed Software is licensed and may not be resold or sublicensed 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 or Sublicensed Software and related materials supplied by Harris.
- 2.4.2 Organization acknowledges and agrees that Harris or its licensors are and shall remain the sole and exclusive owner of the Software, Sublicensed Software, Documentation, Infinity CEP Documentation, Infinity FWM Documentation, and Sublicensed Documentation, including without limitation any and all Intellectual Property Rights therein. Organization shall report to Harris any known or discovered infringement or misappropriation of Harris' or its licensors' Intellectual Property Rights or other rights in the Software, Sublicensed Software, Documentation, Infinity CEP Documentation, Infinity FWM Documentation, or Sublicensed Documentation of which Organization becomes aware.
- 2.4.3 The Organization will take reasonable care to safeguard the Software and Sublicensed Software, and at least the same care as it takes to safeguard its own similar Confidential Information.
- 2.4.4 To confirm compliance with this Article II, Organization shall permit Harris to visit during normal business hours any premises at which the Software and/or Sublicensed Software is used or installed and shall provide Harris with access to its Software and Sublicensed Software. Harris shall provide Organization with reasonable notice of any such audit.

**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 In the event that Harris may distribute to Organization any Third Party Software or refer Organization to licensors of the Third Party Software which is described as Third Party Software in Schedule "A", Organization, subject to further agreement of the parties and receipt of necessary board or other governing body approvals, shall pay Harris for the Third Party Software: (i) in the amounts listed in Schedule "A"; or (ii) directly to licensor of such Third Party Software as set out in Schedule "A"; or (iii) as otherwise agreed by the parties. Harris and/or the Third Party Software licensor 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 or to Organization, as applicable, by

one or more Third Party Software licensors. As such, the Third Party Software is licensed to Organization by the applicable licensor listed in Schedule “A” and subject to the Third Party Terms which shall be pursuant to an agreement between Organization and the licensor of the 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 in Section 8.1 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.

### **ARTICLE III: PROFESSIONAL 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 professional services for the Organization in accordance with the relevant Statement of Work (“**Professional Services**”), which will include the following:

- 3.1.1     Oversee and implement the conversion from the Organization’s existing software applications to Harris’ Software and Sublicensed Software.
- 3.1.2     Install the Software, Sublicensed Software and perform necessary setup and configuration operations.
- 3.1.3     Provide training.
  - (i)     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.
  - (ii)    On-line reference Documentation and Sublicensed Documentation is delivered with each release. Organization may print or copy this Documentation and Sublicensed Documentation solely for its internal use.
  - (iii)   Cancellation of any on-site Professional Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Professional Services. Excepting situations involving a breach by Harris of these Agreement terms, 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 Professional Services. Additionally, Organization hereby acknowledges that cancellation of on-site Professional Services means that such on-site Professional Services will be rescheduled as Harris’s then current schedule permits. Excepting situations involving a breach by Harris of these Agreement terms, Harris is not responsible for any delay in Organization’s project resulting from Organization’s cancellation of Professional 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 Professional Services may be cancelled at Harris’ discretion. If additional Professional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for said Professional Services.
- 3.1.4     The Statement of Work describes in greater detail the Professional Services, the method by which the Professional 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 Professional Services or the obligations of a party, then those details shall prevail over any other document that is less explicit.

**Section 3.2 Performance by Harris**

- 3.2.1 Harris' Discretion -- Subject to the terms of this Agreement, Harris shall determine in its sole discretion the manner and means by which the Professional Services shall be performed. Harris will consult with the Organization on its methodology, manner and means.
- 3.2.2 Conduct on Organization's Premises -- The Professional Services shall be performed with the Organization's full cooperation, on the premises of the Organization or, if agreed to by both parties, 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.
- 3.2.3 Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- 3.2.4 Independence -- As an independent consultant, Organization retains Harris and its employees and agents on an independent contractor basis and not as an employee.
- 3.2.5 Coordination of Services -- Harris agrees to coordinate with Organization staff in the performance of Professional 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 Additional Organization Obligations:
  - (i) 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 and Sublicensed 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 and Sublicensed Software supplied to Organization as requested by Harris. Organization shall provide to Harris, at Organization's expense, access to the Software and Sublicensed Software 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 and Sublicensed Software in accordance with applicable Harris manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Harris and Organization, such personnel will be trained by Harris or Organization within fifteen (15) days. If Harris performs such training, it shall be compensated in accordance with this Agreement.
  - (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 and/or Sublicensed 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, Sublicensed 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 and/or Sublicensed Software;
    - (b) assuring proper required hardware and software installation, configuration, verification, audit controls and operating methods;
    - (c) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction; and
    - (d) timely upgrade and keeping current all third party license to releases and/or software products to meet the requirements of the Software and Sublicensed Software.

#### **ARTICLE IV: SUPPORT AND MAINTENANCE**

##### **Section 4.1     Delivery of Support and Maintenance 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 and Maintenance Services will be provided during the hours of operation as described in Schedule "D" hereto, effective on the date the Software and Sublicensed Software is installed (the "**Start Date**"). Such services may be modified subject to further agreement of the parties and receipt of necessary board or other governing body approval. Organization will establish auto remote access procedures compatible with Harris' current practices.
- 4.2.2 The initial term for Support and Maintenance Services shall be for one year beginning on the Start Date ("**Initial Support Term**"). Thereafter, the term of Support and Maintenance Services 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 Support Term or any subsequent anniversary of such date (each a "**Support Renewal Term**"). The Initial Support Term and Support Renewal Term shall collectively be referred to as the "Support Term". Organization shall pay the then prevailing Support and Maintenance Fee in advance for each such Support Term 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 Support Term. , Harris shall neither refund any Support and Maintenance Fee nor any Billable Fees if the Support and Maintenance Services are terminated. Organization acknowledges that if Support and Maintenance Services are terminated, then it will not be eligible to receive the benefits of Support and Maintenance Services as defined in this Article IV, including the right to Releases or to access the source code in escrow upon the occurrence of any Event of Default (as defined in 4.2.4, below).
- 4.2.3 Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the Support and Maintenance Services shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of such Support and Maintenance Services. Any updates related to Third Party Software (if any) shall be subject to the applicable Third Party Software licensor's agreement.

- 4.2.4 Harris shall have the right to terminate Support and Maintenance Services pursuant to this Agreement upon no less than sixty (60) days' written notice of termination if:
- (i) Organization attempts to assign this 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 Support Renewal Term.

## **ARTICLE V: REPRESENTATIONS AND WARRANTIES**

### **Section 5.1 Warranty of Performance**

- 5.1.1 The Software and Sublicensed Software will substantially perform as described in the specifications set out in the Documentation and Sublicensed Documentation, respectively, for a period of ninety (90) days from the Completion of Services if the Software and Sublicensed Software are used in accordance with the Documentation and Sublicensed Documentation, respectively, the terms of this Agreement and where the Organization has the Required Programs and the hardware meets the requirements. Excepting situations involving a breach of this Agreement by Harris, the Organization's sole recourse in the event the Software or Sublicensed Software do not conform to the foregoing warranty is the repair and replacement of the Software or Sublicensed Software, as applicable.
- 5.1.2 In the event an error is discovered in the Software or Sublicensed 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 within a reasonable time.
- 5.1.3 Harris warrants that Professional Services performed pursuant to this Agreement will be performed in a professional and workmanlike manner by personnel who are exercise reasonable care and skill in performing their individual tasks.

### **Section 5.2 Exclusions to Warranty**

- 5.2.1 Harris shall not be liable for any breach of the foregoing warranties which results from causes beyond the reasonable control of Harris, including:
- (a) where the installation, integration, modification or enhancement of the Software or Sublicensed Software, as applicable, was not done by Harris or its authorized agent, or where Organization has taken any action which is prohibited by the Documentation or Sublicensed Documentation, as applicable, or this Agreement;
  - (b) any use or combination of the Software or Sublicensed Software with any software, equipment or services not supplied by or on behalf of Harris;
  - (c) user error, or other use of the Software or Sublicensed Software in a manner or in an operating environment for which it was not intended or other than as permitted herein;
  - (d) 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
  - (e) any other event of force majeure.

### **Section 5.3**     **No Other Warranties**

TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET OUT IN SECTION 5.1, THE SOFTWARE AND SUBLICENSSED SOFTWARE ARE LICENSED (OR SUB-LICENSED), THE PROFESSIONAL SERVICES, SUPPORT AND MAINTENANCE SERVICES, AND ALL OTHER MATERIALS AND 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 ARISING UNDER THIS AGREEMENT REGARDING THE SOFTWARE, SUBLICENSSED SOFTWARE, THE PROFESSIONAL SERVICES, THE SUPPORT AND MAINTENANCE SERVICES, 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 AND SUBLICENSSED 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 AND SUBLICENSSED SOFTWARE CAN BE FOUND OR CORRECTED.

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 and Sublicensed 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 and Sublicensed 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 sixty (60) days.
- 5.4.3 Organization shall provide no less than one hundred eight (180) days’ notice where the Organization anticipates changing any of the third party software or hardware products in use on the Organization’s system so that Harris may assess whether the Software and Sublicensed Software will function with the different software or hardware. Where Harris determines that the Software or Sublicensed 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, which document may require approval by a board or other governing body.



**ARTICLE VI: FEES AND PAYMENT**

**Section 6.1 Fees and Payments for Licenses**

- 6.1.1 In consideration of the license rights granted to Organization under this Agreement Organization agrees to pay to Harris the License Fees and/or the Subscription Fees, as applicable, which is not inclusive of any applicable taxes. As applicable, 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 and/or the Subscription Fees are non-refundable.
- 6.1.2 Except for any part of the License Fees and/or the Subscription Fees which are payable on the Effective Date, or in situations involving a breach by Harris of this Agreement, during the term of this Agreement or during the Subscription Term, as applicable, Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule "B" to pay Harris the applicable License Fees or the Subscription Fees, as applicable.

**Section 6.2 Fees and Payments for Professional Services**

- 6.2.1 In consideration of the Professional Services, the Organization agrees to pay Harris the total fees as set out the SOW (the "**Professional Services Fees**") in accordance with the payment schedule set out therein. All payments for Services are non-refundable.
- 6.2.2 Subject to necessary further agreement of the parties and receipt of approval from a board or other governing body, 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 upon receipt.
- 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, following sixty (60) days' notice and opportunity to cure, Harris shall have the option to suspend or terminate all Professional 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 The Fees and any other fees set out in this Agreement are exclusive of taxes. To the extent applicable, Organization agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Harris' net income).
- 6.2.6 Change Orders. For proposed changes to the Professional 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 gain necessary approvals for and execute Change Orders in respect thereof. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it as a part of the proposed Change Order, or as separately approved by the Parties. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration



paid, timelines governing, and the Services), and 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**

- 6.3.1 In consideration for the Support and Maintenance Services provided hereunder, Organization shall pay the Support and Maintenance Fee. The Support and Maintenance Fee will be billed annually in advance beginning on the Start Date and thereafter on the anniversary of the Start 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 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. Subject to necessary further agreement of the parties and receipt of board or other governing body approval, Harris may change the Support and Maintenance Fee from time to time in relation to each renewal term, but Organization shall only be billed once per year and Harris shall provide sufficient notice of such fee change that Organization may exercise its rights pursuant to Article VII of this Agreement.
- 6.3.2 In addition to the Support and Maintenance Fee, and subject to necessary further agreement of the parties and board or governing body approvals, 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 week days and a \$140.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided);
  - (iv) a mileage charge based on the current U.S. Internal Revenue Service recommended rate per mile, long distance telephone calls; and
  - (v) all other reasonable expenses incurred in the performance of Harris's duties including courier services and documentation copying or production.
- Subject to further agreement of the parties provided with sufficient time for Organization to exercise its rights under Article VII, 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, and necessary approvals of Organizations board or governing body are obtained.
- 6.3.3 Harris shall supply all Upgrades to Organization at no additional charge other than the payment of the 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, and may require further board or governing body approvals.
- 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 Support and Maintenance Services 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 the Support and Maintenance Fee 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, as otherwise set forth herein. As applicable, any taxes levied in relation to the Professional Services required for a Release shall be paid by Organization.

## **ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY**

### **Section 7.1 Remedies and Liability**

- 7.1.1 Termination of this Agreement shall be without prejudice to any other rights and remedies except as expressly set out in this Agreement.
- 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 as set forth in Schedule "F" in the case of the Hosting Services 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, BOTH PARTIES AGREE THAT TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HARRIS', ITS LICENSORS', AND EACH OF THEIR RESPECTIVE OFFICERS', EMPLOYEES', AND AGENTS' 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 AN AMOUNT THAT IS EQUAL TO THE FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THIS AGREEMENT LESS ANY AMOUNTS PAID TO ORGANIZATION UNDER SCHEDULE "F" IN RESPECT OF CLAIMS RELATED TO THE HOSTING SERVICES.
  - (ii) IN ADDITION TO THE FOREGOING, HARRIS, ITS LICENSORS, AND EACH OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AND AGENTS 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 IT 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. **THIS LIMIT OF LIABILITY SHALL NOT APPLY TO: (1) DAMAGES CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, (2) HARRIS' OBLIGATIONS TO INDEMNIFY AND DEFEND CUSTOMER UNDER THIS AGREEMENT, OR (3) WRONGFUL DEATH CAUSED BY HARRIS.**
  - (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 (INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE).

### **Section 7.2 Intent**

Except as otherwise set forth herein, 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 in advance on Organization's behalf. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations 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 manner whatsoever 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 or a third party in any manner whatsoever;
  - (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.
- 7.3.3 Any breach by Organization of this Section 7.3 shall nullify this indemnity but not the sole right of Harris to have full and complete authority of the defense to defend such claim or proceeding and of all negotiations related therewith and the settlement thereof. In the event that the Organization's use of the Software is finally held to be infringing, Organization agrees that the only remedy available to it shall be subject to further agreement of the parties and receipt of approvals, as necessary, for Harris to: (1) procure for the Organization the right to continue use of the Software; or (2) modify or replace the Software so that it becomes non-infringing. .
- 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, as set forth herein.
- 7.3.5 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.
- 7.3.6 The indemnity provisions of this Section 7.3 shall not apply to Third Party Software.

**ARTICLE VIII: GENERAL**

**Section 8.1 Confidentiality Obligations**

Each of the parties (the “**Receiving Party**”, as applicable) agree, subject to and as permissible according to applicable law:

- (i) to keep confidential any and all Confidential Information with respect to the other party (the “**Disclosing Party**”) which it has received or may in the future receive in connection with this Agreement 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 Disclosing Party from unauthorized use, disclosure, copying or publication;
- (ii) not to use the Confidential Information of the Disclosing Party other than in the course of exercising its rights or performing its obligations under this Agreement;
- (iii) not to disclose or release such Confidential Information except 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 first give reasonable notice to the Disclosing Party prior to such disclosure so that the Disclosing Party may obtain a protective order or equivalent and provided that the Receiving Party shall comply with any such protective order or equivalent;
- (iv) not to disclose or release such Confidential Information of the Disclosing Party to any third person without the prior written consent of the Disclosing Party, except for authorized employees or agents of the Receiving Party who have a need to know such information for the purpose of performance under this Agreement and exercising its rights under this Agreement, and who are bound by confidentiality obligations at least as protective of the Disclosing Party’s Confidential Information as terms and conditions of this Agreement; and
- (v) to take such actions as may be reasonably necessary to enforce its agreements with its employees and agents, including commencing legal proceedings.

**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 within ninety (90) days or issue a written notice of its own disputing the alleged default 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 within such ninety (90) day period 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 any of the Fees in accordance with Article VI, then Harris shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization, as set forth above.
- 8.2.3 As set forth above, 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.
- 8.2.4 The parties agree that if the Organization breaches any term of Section 2.3, Section 2.4, or any Intellectual Property Right of Harris or its licensors, then Harris shall have the right to terminate this Agreement as set forth above effective immediately upon written notice to that effect.

**Section 8.3 Procedure on Termination**

- 8.3.1 If this Agreement is terminated by Organization prior to the Completion of Services, then within ninety (90) days following such termination, the Organization shall either return to Harris, delete, or destroy the Software and Sublicensed Software from all of its locations (except as required under any statute related to retention requirements) together with all Confidential Information of Harris including all copies thereof in Organization’s possession or control and Organization shall certify in writing to Harris that all of the Organization’s copies of the Software, Sublicensed Software and Harris Confidential Information have either been returned to Harris, deleted, or destroyed.
- 8.3.2 If this Agreement is terminated by Organization following the Completion of Services, then
  - (a) the Organization shall either return to Harris, delete, or destroy the Infinity Enterprise Software from all of its locations (except as required under any statute related to retention requirements) together with all Confidential Information of Harris including all copies thereof in Organization’s possession or control and Organization shall certify in writing to Harris that all of the Organization’s copies of the Infinity Enterprise Software and related Harris Confidential Information have either been returned to Harris, deleted, or destroyed; and
  - (b) the Organization may retain the copy of the CIS Infinity Software and Sublicensed Software in its possession as of the Completion of Services and the license rights in Article II shall survive and continue for so long as and conditional upon Organization’s ongoing compliance with the terms and conditions of this Agreement applicable to the CIS Infinity Software, Sublicensed Software, Harris Intellectual Property Rights, and Confidential Information of Harris, including, but not limited to, such obligations relating to ownership of the CIS Infinity Software, Sublicensed Software, and confidentiality and all of the restrictions on the Organization as set out in Article II.
- 8.3.3 If this Agreement is terminated by Harris, then all license rights granted to Organization shall immediately cease and the Organization shall either return to Harris, delete, or destroy all copies of the Software and Sublicensed Software from all of its locations (except as required under any statute related to retention requirements) together with all Confidential Information of Harris and all copies thereof in Organization’s possession or control, and Organization shall certify in writing to Harris that all

such copies of the Software, Sublicensed Software, and Confidential Information of Harris have either been returned to Harris, deleted or destroyed.

- 8.3.4 All warranties related to the Software, Sublicensed Software, Professional Services, and Support and Maintenance Services terminate upon the termination of this Agreement.

**Section 8.4 Hosting Services**

Organization shall have the option to purchase Hosting Services from Harris for the Software and Sublicensed Software. Subject to the payment of the hosting fees set out in Schedule "F", Harris shall provide the Hosting Services to Organization subject to the terms and conditions set out in Schedule "F".

**Section 8.5 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, unless the parties (through identified representatives) mutually agree to an extension of this time in writing. Such mediator shall be reasonably 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 under applicable law 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  
1 Antares Drive, Suite 400  
Ottawa, Ontario K2E 8C4  
Attention: Sean Sykes, Vice President, Business Development & Customer Success

and in the case of the Organization, to:

Norman Utilities Authority  
225 N Webster / PO Box 370  
Norman, OK 73069 / 73070  
Phone: (405) 366-5443

Attn: Utilities Director / Information Technology Director

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. 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 Fees set out in this Agreement have 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 Concurrent Users or sites, the parties may consider and enter into further agreements where Harris may be entitled to receive, and the Organization shall pay, additional License Fees and/or Subscription Fees (as applicable), Support and Maintenance Fee or other fee based on the then prevailing 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 and Sublicensed Software.

**Section 8.8**     **Entire Agreement**

This Agreement, together the SOW (except the SOW which references the Reseller Agreement) and the Schedules attached to 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 convenience of 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 shall be governed by the laws of the State of Oklahoma and the federal laws of the United States applicable therein, without reference to the conflicts of law principles thereof; provided, however, that the Uniform Computer Information Transaction Act will not apply even if adopted as part of the laws of said State or Province. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement.

#### **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 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 8.15 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 8.16 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 8.17 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 8.19 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 8.20 Force Majeure**

No default, delay or failure to perform on the part of Harris 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, walkouts, 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, default of a common carrier or other disasters or events, failure in operability or destruction of the Organization's computer (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Software.

#### **Section 8.21 Survival**

The following sections and articles shall survive the termination or expiration of this Agreement: Article I, Sections 2.1.3-2.1.6, Sections 2.2-2.6, Section 3.3, Section 4.2.3, Sections 5.1-5.4, Article VI, Article VII, and Article VIII and any other provisions which are reasonably required to ensure that the parties fully exercise their rights and obligations hereunder.

#### **Section 8.22 Cooperative Purchasing Agreement**

The parties intend that this Agreement may be used by other public contracting agencies. Any such cooperative procurement shall be between the purchasing public contracting agency and Harris, and those parties shall be solely responsible for ensuring that such procurement is in compliance with applicable State law. Organization makes no representations or warranties as to the ability of another public contracting agency and Harris to use this Agreement as a cooperative procurement.

#### **Section 8.23 Counterparts**

This Agreement may be executed in counterparts (whether by facsimile signature, PDF via email, or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

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

**N. HARRIS COMPUTER CORPORATION**

**Attest**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**NORMAN UTILITIES AUTHORITY**

\_\_\_\_\_  
Signature

Larry Heikkila  
\_\_\_\_\_  
Name (Printed or Typed)

Mayor/Chairman  
\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
City Clerk

REVIEWED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Norman Utilities Authority Attorney

Schedule “A” - Description of Software, License Granted and Fees

Schedule A.1: Advanced Utility Systems Description of Software, Sublicensed Software and Fees

Software	License Term	Maximum Meters	Maximum Number of Concurrent Users	Maximum Number of Named Users	Maximum Accounts
Infinity CEP Software (Customer Engagement Portal)	Subscription Term of 5 years	45,000	N/A	N/A	N/A

All terms and conditions shall remain as governed by this Agreement. There are no separate Third Party Software Licenses or Terms and Conditions or Maintenance Agreements that Organization is required to execute for the Infinity CEP Software.

**Annual Subscription Fees**

Annual Subscription Fees (includes support)	Amount
Year 1	Through Authorized Reseller (Utiliuse)
Year 2	\$77,235
Year 3	\$81,096
Year 4	\$85,150
Year 5	\$89,410

Annual Subscription Fees beginning year 2 shall be paid by the Organization directly to Harris in accordance with the Software License, Services, and Support and Maintenance Agreement.

**PAYMENT TERMS:**

The Annual Subscription Fees will be due in advance of the Initial Term and each Renewal Term, and is non-refundable.

Professional Services Fees stated above will be invoiced through the Authorized Reseller (UtiliUse) based upon the milestones outlined in Schedule B.

All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed monthly as incurred pursuant to further agreement of the parties. Lapsed payments may lead to denial of access to the Service. Delayed payments are subject to a Prime plus 2.5% charge compounded monthly.

**ADDITIONAL PROFESSIONAL SERVICE(S) FEES:**

Additional Professional Services may be provided on-site or via the telephone, upon further agreement of the

parties and receipt of necessary approvals. Additional Professional Services work provided via telephone is billed at the rate of two hundred and forty five (\$245) per hour. Additional Professional Services work performed on-site does not include travel, lodging and per diem expenses. Professional Services performed one year or more after the execution date of this Agreement shall be billed at the then current Advanced Professional Services rates. Help line support and Support Services do not include training or other Professional Services.

Organization shall incur a seven-hundred fifty dollar (\$750) daily surcharge for any Professional Services provided on weekends or Advanced recognized holidays; plus the corresponding standard Professional Services fees and any applicable travel charges per Article 6.

Additional Professional Services may include, but are not limited to, the following: software installation, configuration, data validation, system setup, system balancing, interface setup, interface testing, process training, application training and business requirements gathering.

**RESET OF TERM TO MATCH FISCAL YEAR:**

Organization may request that Advanced match the annual invoicing of the Annual Subscription Fees with Customer's fiscal year. In order for Organization to elect to match annual invoicing with their fiscal year, Organization must make said request to Advanced in writing and during the Initial Term of this Agreement. If such election is made Advanced shall, a) issue a prorated invoice for any Subscription Fees due for the portion of the year remaining in Organization's current fiscal year, b) extend the then current term to expire at the end of the Organization's subsequent fiscal year, c) issue an annual invoice thereafter on the annual anniversary date of Organization's fiscal year for any Subscription Fees due, and d) reset future annual terms to expire at the end of Organization's fiscal year. Annual Subscription Fees are invoiced in advance of an upcoming annual term. Subscription fees shall be due and payable thirty (30) days from date of invoice.

## Schedule “B” - Statement of Work (“SOW”)

[intentionally omitted].

## Schedule "C" – Sample Change Order Form

[ORGANIZATION]

### Advanced Utility Systems Change Order

**Date:**

**Change ID:**      Change Order #

**Description:**



**Authorization**

Advanced Utility Systems is authorized to proceed with the change for the [CLIENT].

Project Role	Team Member	Signature / Date of Signature
[CLIENT] Project Manager		
		Date:
Advanced Project Manager		
		Date:

## Background Information

[CLIENT] and Advanced Utility Systems (Advanced) entered into a Software Implementation Services Agreement (the Agreement) on [DATE].

As defined in section 1.1 (b) of the Software Implementation Services Agreement: “Change Order” means any written documentation between the Organization and Harris evidencing their agreement to change particular aspects of this Agreement. Section 4.2 describes a change order: With respect to any 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, as may require further approvals of a board or other governing body. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the Services), and 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.

Based on this provision, Advanced presents the following Change Order to the [CLIENT].

### Introduction / Purpose

*Description of the business need for the Change Order (REQUIRED).*

### Scope

*Specific requirements of the Change Order (REQUIRED).*

### Scope Change

*Is not required for all CO's. Only use this section if relevant.*

### Effort Estimate:

*Is not required for all CO's. Only use this section if relevant.*

Original Scope Item/Scope Addition	Scope Change	Reason	Hours
<i>Cite SOW reference</i>	<i>New scope/language</i>	<i>Explanation/justification</i>	
<b>NET CHANGE</b>			

**Cost\*:**

*REQUIRED – even if it is \$0.*

The cost for this change order is **xxx** hours x \$**XXX** (hourly rate) = \$**XXX**.

This amount will be due according to the schedule below:

Change Order Signing	100%	\$ <b>XXX</b>
----------------------	------	---------------

The scope of this change order is not tied to any milestone or project closure.

The functionality contained in this change order will be delivered **XXX** from signing.

Requirement	Hours	Cost (\$USD)
<i>Cite changes from above</i>		
<b>Total</b>		

\* Net of applicable taxes and associated expenses

## Schedule “D” – Standard Support and Maintenance Guidelines

The purpose of this Schedule is to provide our customers with information on our standard coverage, the services which are included as part of your annual software support, a listing of call priorities, an outline of our escalation procedures and other important details.

Harris reserves the right to make modifications to this document as required; provided, however, Harris shall not reduce the scope of support provided hereunder without the prior consent of the Organization.

The services listed below are services that are included as part of your software support.

- 800 Toll Free Telephone support
- Software for Life
  - Guaranteed Support on your existing applications for life
  - Scheduled assistance for installations, upgrades and other special projects (there may be charges depending on the scope of work)
- Technical troubleshooting and issue resolution
- E-mail support call logging and notification
- eSupport access 24 x 7 with the following on-line benefits:
  - Log and close calls
  - View and update calls
  - Update contact information
  - Access published documentation
  - Access available downloads
  - Access Support knowledge base
  - Participate in Discussion Forums
- Standard software releases and updates
  - Defect corrections (as warranted)
  - Planned enhancements
  - State and/or Federal mandated changes (charges may exist depending on scope)
  - Participation in beta program
  - Release notes
- Customer Care Program
  - Quarterly News Letter with support tips
  - Technical support bulletins
  - Communication on new products and services
  - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Ability to attend the annual customer conference (attendance fees apply)

### **Help Desk Hours**

Our standard hours of support are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated statutory holidays. After hours telephone support is available from 8:00 p.m. EST through to 8:00 a.m. EST. Weekend and holiday assistance is available and must be scheduled in advance and in most cases is billable.

### **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 calls in the order that they are received, however calls will be escalated based on the urgency of the issue reported. Our response time guidelines are as follows:

Priority 1: 1 - 4 hours

Priority 2: 1 - 8 hours

Priority 3: 1 - 24 hours

### **Call Priorities**

In an effort to assign our resources to incoming calls as effectively as possible, we have identified three types of call priorities, 1, 2 and 3. A Priority 1 call is deemed by our support staff to be an Urgent or High Priority call, Priority 2 is classified as a Medium Priority and Priority 3 is deemed to be a Low Priority. The criteria used to establish guidelines for these calls are as follows:

#### **Priority 1 – High**

- Security issues
- System Down (Software Application, Hardware, Operating System, Database)
- Inability to process bills
- Program errors without workarounds
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes

#### **Priority 2 - Medium**

- System errors that have workarounds
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)
- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

#### **Priority 3 - Low**

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues

- Issues with workarounds
- Recommendations for enhancements on system changes
- Questions on documentation

### **Call Process**

All issues or questions reported to support are tracked via a support call or ticket; our support analysts cannot provide assistance unless a support call or ticket is logged. Our current process for logging calls and tickets includes the following: eSupport (via website), email, phone and fax.

- Your ticket must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our ticketing system or one of our support analysts will provide you with a ticket ID to track your issue.
- Your ticket will be assigned to the first available support representative.
- As the support representative assigned to your ticket investigates your issue, you will be contacted and advised as to where the issue stands and the course of action that will be taken for resolution. If we require additional information, you will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with your ticket will be tracked in our support ticketing system. At any time, if available to you, you may log onto our ticketing system to see the status of your call.
- Once your issue has been resolved, you will receive an automated notification by email that your ticket has been closed. This email will contain the entire event history of the issue from the time the ticket was created and leading up to the resolution of the issue. You also have the option of viewing both your open and closed tickets, if available to you, via our support ticketing system.
- Contact the support department at your convenience for a status update on your development issues, or log onto our ticketing system (if available to you) to view your issues on-line.

### **Escalation Process**

Our escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate with the support department as follows:

**Level 1:** Contact the support representative working on your issue

**Level 2:** Contact the Team Lead

**Level 3:** Contact the Manager of Support

**Level 4:** Contact the Vice President of Support Services

**Level 5:** Contact the Executive Vice President

### **Holiday Schedule**

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Day	Closed
President's Day	Closed
Memorial Day	Closed
Independence Day	Closed
Labor Day	Closed
Thanksgiving	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
New Year's Eve	Early Closure