

NORTH|STAR™

UTILITIES SOLUTIONS

Master Agreement Software, Services, Support and Maintenance Agreement

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Master Agreement Terms and Conditions

THIS 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 -

Town of Castle Rock (“Organization”)

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

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

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 **“Completion of Services”** means that the Software is operational and performing in conformity with the specifications set out herein. Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as its predominant business system.
- 1.1.2 **“Concurrent Users”** means the total number of Users who can access the Software at any one time as detailed in Schedule “A,” and further described in Article II.
- 1.1.3 **“Concurrent User License”** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule “A”.
- 1.1.4 **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be establish by evidence that would be acceptable to a court of competent jurisdiction.
- 1.1.5 **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.

- 1.1.6 **“License”** means the license rights granted to the Organization pursuant to Article II hereof and includes both a Concurrent User License and a Site License.
- 1.1.7 **“Release”** means an Update and an Upgrade.
- 1.1.8 **“Site”** means solely at the production environment described in Schedule “A”.
- 1.1.9 **“Site License”** means a license that restricts the Software such that it can reside in one production environment and a reasonable number of non-production environments.
- 1.1.10 **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software.
- 1.1.11 **“Third Party Software”** means the third-party software product licensed to Organization by the applicable licensors as listed in Schedule “A” The terms and conditions for the Third Party Software are listed in Schedule “E”. Future Releases of the Software may require alternate third-party software to be licensed by Organization, which will be subject to a third party license agreement between Organization and the relevant third party software licensor. In such case Schedule “A” shall be amended to add any such third-party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- 1.1.12 **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
- 1.1.13 **“Upgrade”** is a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is typically designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).
- 1.1.14 **“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.

Section 1.2 Currency

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

Section 1.3 Schedules

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

- Schedule “A” - Description of Software
- Schedule “B” - Statement of Work (“SOW”) with attached
 - License Fees & Payment Schedule
 - Fee Structure and Payment Schedule for Consulting Services
 - Support and Maintenance Fees
- Schedule “C” - Sample Change Order Form
- Schedule “D” - Standard Support and Maintenance Guidelines
- Schedule “E” – Third Party Software Licenses and Third Party Software Terms

ARTICLE II: SOFTWARE LICENSES

Section 2.1 Grant of Licenses

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

defined as anyone authorized by the Organization who is logged onto the Software, regardless of the type of interface (i.e. graphical user interface or browser user interface).

- (ii) A Site License permits the Organization to use the Software on the Designated Computer System in one (1) production environment and a reasonable number of non-production environments for the purposes of disaster recovery, disaster testing, training, archival and backup.

Organization requires a separate Site License for each production environment into which the Software or any portion thereof is read in machine-readable form.

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

- 2.1.6 As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

Section 2.2 Term of License

- 2.2.1 **Term of License of Software.** This Agreement commences on the Effective Date.

- 2.2.1.1 For any Software License(s) identified on Schedule "A" as perpetually licensed and licensed pursuant to Article 2.1.1.1 is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof.

- 2.2.1.2 For any Software identified on Schedule "A" as licensed on a subscription basis and licensed pursuant to Article 2.1.1.2, unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year (the "Initial Term"). After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a "Renewal Term") subject to Harris's then-current price structure and any modifications to the terms and conditions of this Agreement made by Harris upon written notice to Organization to reflect Harris's then current version of this Agreement unless either party provides written notice to the other party of its intention not to renew within thirty (30) days of the end of the then current term. The Initial Term and Renewal Term(s) shall collectively be referred to as the "Term". The License is subject to further restrictions as required under the Hosting Services provisions of this Agreement and the payment of any applicable fees as set forth in Schedule "B."

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

- 2.2.3 **Term of Support and Maintenance.** The initial term for services provided, pursuant to Article IV hereinafter, shall be for one year beginning on the Start Date. Thereafter, the Support and Maintenance provisions of this Article IV shall automatically renew annually, unless terminated by either party upon giving to the other not less than thirty (30) days' notice in writing prior to the end of the initial term or any subsequent anniversary of such date. Organization shall pay the then prevailing Support and Maintenance Fee in advance for each such one-year term and where the notice of non-renewal has not been provided in accordance with these terms, the Organization is obliged to pay the Support and Maintenance Fee for the then applicable one-year term. Harris shall neither refund any Support and Maintenance Fees nor any Billable Fees if the Support and Maintenance provisions of this Agreement are terminated.

Section 2.3 Restrictions on Use

- 2.3.1 Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization's primary business or operations; (ii) disassemble, decompile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivative works of the Software; (iv) rent, lease, lend, or use the Software for time-sharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to Harris for any misuse of the Software.
- 2.3.2 The Software and related materials supplied by Harris are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software may not be resold or licensed by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

Section 2.4 Ownership of Software and Confidential Information

- 2.4.1 The Organization acknowledges that the Software contains proprietary information and Confidential Information that is the sole property of Harris.
- 2.4.2 The Organization will take reasonable care to safeguard the Software, and at least the same care as it takes to safeguard its own similar Confidential Information.
- 2.4.3 To confirm compliance with this Article II, Organization shall permit Harris to visit during normal business hours any premises at which the Software is used or installed and shall provide Harris with access to its Software. Harris shall provide Organization with reasonable notice of any such audit.
- 2.4.4 The Organization is a local government entity subject to the provisions of the Colorado Open Records Act. The Organization will give Harris notice in the event that it receives notice of a request under the Colorado Open Records Act to disclose information related to this contract or other information Harris has identified as confidential. If Harris declines to release identified confidential information, Harris must defend the Organization should it go before a district court of law.

Section 2.5 Ownership and Disposition of Documents

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

Section 2.6 Third Party Software

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

ARTICLE III: CONSULTING SERVICES

Section 3.1 Harris’ Services

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

- 3.1.1 Oversee and implement the conversion from the Organization’s existing software applications to Harris’ Software.
- 3.1.2 Install the Software and perform necessary setup and configuration operations.
- 3.1.3 Provide training.
 - (i) In any training class exceeding ten (10) people, Organization may be assessed an additional charge for additional instructor(s).

- (ii) Organization shall provide copies of the training manuals required for the training classes to each participant either by photocopy or electronic duplication. Each copy is subject to the restrictions and obligations contained in this Agreement.
 - (iii) On-line reference Documentation is delivered with each release. Organization may print or copy this Documentation solely for its internal use.
 - (iv) Cancellation of any on-site Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Services. Organization will be billed for any non-recoverable direct costs incurred by Harris that result from a cancellation by Organization with fourteen (14) days or less of scheduled on-site Services. Additionally, Organization hereby acknowledges that cancellation of on-site Services means that such on-site Services will be rescheduled as Harris's then current schedule permits. Harris is not responsible for any delay in Organization's project resulting from Organization's cancellation of Services. If upon Harris arrival, the Organization has not completed required tasks for such visit, then the Organization will be billed 100% of the on-site fee and scheduled on-site Services may be cancelled at Harris' discretion. If additional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for said Services.
- 3.1.4 The Statement of Work describes in greater detail the Services, the method by which the Services shall be performed and other obligations on the part of the two parties. To the extent that the Statement of Work more explicitly details the Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of Harris in the Statement of Work are not binding on Harris and are merely provided for informational purposes; the only warranties and representations provided by Harris in respect of the Services and this Agreement are found in Article V.

Section 3.2 Performance by Harris

- 3.2.1 Manner of Performance -- Harris shall perform the Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in their performance.
- 3.2.2 Harris' Discretion -- Harris shall determine in its sole discretion the manner and means by which the Services shall be performed. Harris will consult with the Organization on its methodology, manner and means.
- 3.2.3 Conduct on Organization's Premises -- The Services shall be performed with the Organization's full cooperation, 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.
- 3.2.4 Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- 3.2.5 Independence -- As an independent consultant, Organization retains Harris and its employees and agents on an independent contractor basis and not as an employee.
- 3.2.6 Coordination of Services -- Harris agrees to coordinate with Organization staff in the performance of Services and to be available for consultation at all reasonable times.

Section 3.3 Performance by Organization

- 3.3.1 Cooperation by Organization: The Organization acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Organization and its staff and agrees to cooperate fully with Harris to achieve the Completion of Services expeditiously.
- 3.3.2 Project Manager: The Organization shall designate a project manager to facilitate the successful implementation.
- 3.3.3 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 supplied by Harris. Organization shall provide, upon Harris request, additional data to reproduce the environment in which such defect occurred.
 - (iii) Organization shall allow the use of online diagnostics on the Software supplied to Organization as requested by Harris. Organization shall provide to Harris, at Organization’s expense, access to the Designated Computer System via the Organization’s firewall to communications software (e.g. PC Anywhere, WebEx, Web Demo).
 - (iv) Organization personnel shall be educated and trained in the proper use of the Software in accordance with applicable Harris manuals and instructions. 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 in the event of error, defect or malfunction.
 - (vi) Organization shall not permit any third party to have direct access to or provide services in relation to the Software or any Third Party Software without Harris’ prior written consent.
 - (vii) Organization shall have the sole responsibility for:
 - (a) the performance of any tests it deems necessary prior to the use of the Software;
 - (b) assuring proper Designated Computer System 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 releases and/or Software products to meet the requirements of the Software.

ARTICLE IV: SUPPORT AND MAINTENANCE

Section 4.1 Delivery of Support Services

- 4.1.1 Method of Delivery. Harris shall provide software support via telephone and electronic transmission, with site visits only when necessary. The support services will be provided during the hours of operation as described in Schedule “D” hereto, effective on the date the Software is installed (the “Start Date”).

Such services may be modified at Harris' sole discretion. Organization will establish auto remote access procedures compatible with Harris' current practices.

- 4.2.2 The initial term for services provided, pursuant to this Article IV, shall be for one year beginning on the Start Date.
- 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 services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement.
- 4.2.4 Source Code Escrow. Harris maintains an escrow agreement with a third party under which is placed the source code for each major release of its Software. Organization may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee. Organization will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Harris Software is strictly governed by the terms of the escrow agreement. No escrow in Third Party Software is provided.
- 4.2.5 Harris shall have the right to terminate ongoing Support and Maintenance pursuant to this Agreement immediately if:
 - i) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with this Agreement; or
 - ii) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Section 5.01 Warranty of Performance

- 5.1.1 The Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Completion of Services if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs and the hardware meets the requirements. The Organization's sole recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.
- 5.1.2 In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by Harris, provided Organization has ongoing Support and Maintenance with Harris pursuant to Article IV of this Agreement, Harris will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of Article IV. Harris reserves the right to correct any defects about which it is made aware and to produce in its sole discretion Releases at a time of Harris' own choosing.
- 5.1.3 Harris warrants that services performed pursuant to this Agreement will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Section 5.02 Exclusions to Warranty

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

- 5.2.1 where the installation, integration, modification or enhancement of the Software was not done by Harris or its authorized agent, or where Organization has taken any action which is prohibited by the Documentation or this Agreement;

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

Section 5.03 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOFTWARE IS LICENSED 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 REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABLE QUALITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

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

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

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

Section 5.04 Required Programs and Hardware

- 5.4.1 The Organization acknowledges that the use of the Software may require that the Organization obtain and install additional required software programs (the "**Required Programs**"), as detailed in the attached Schedule "A". The Organization agrees that the acquisition of the Required Programs (including the cost for future updates) shall be at its sole cost and that the cost thereof is not included in the fees herein.
- 5.4.2 Organization's hardware shall be maintained in sufficient quality, condition and repair at Organization's sole cost and expense to support the Software licensed and supported herein. If Harris determines that

Organization's hardware is not of sufficient quality, condition and repair, Harris shall so notify Organization, and Organization will use reasonable efforts to remedy any hardware deficiencies within thirty (30) days.

- 5.4.3 Organization shall provide no less than one hundred eighty (180) days' notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that Harris may assess whether the Software will function with the different software or hardware. Where Harris determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization's sole risk. Harris and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

ARTICLE VI: FEES AND PAYMENT

Section 6.1 Fees and Payments for Licenses

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

Section 6.2 Fees and Payments for Services

- 6.2.1 The Organization agrees to pay Harris total fees as delineated in attachments to the SOW (Schedule "B"). The fee structure and payment schedule for Services is outlined therein. All payments for Services are non-refundable.
- 6.2.2 Annual Subscription for Subscription Licenses
- 6.2.1.1 The Organization agrees to pay Harris the Annual Subscription Fees, which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "B". The License is subject to the full payment of the Annual Subscription Fees in accordance with the payment terms set out in Schedule "B".
- 6.2.1.2 The Annual Subscription Fee will be billed annually in advance beginning as set forth in Schedule "B" 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 Annual Subscription Fee to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Annual Maintenance Fee from time to time in relation to each renewal term, but Organization shall only be billed once per year. The Annual Subscription will end on December 31st and renew January 1st of each year under this Agreement.
- 6.2.3 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").

- 6.2.4 During the term of this Agreement, Harris shall, from time to time, deliver invoices to Organization. Each invoice is due and payable upon receipt.
- 6.2.5 In the event Organization fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Harris has under this Agreement or otherwise, Harris shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any late charges.
- 6.2.6 Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the delivery of the Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in Schedule "B" and such sums (including the payment of the taxes) shall be payable upon receipt of invoice. Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Services, Support Services or Licenses or that are in relation to income taxes payable by Harris employees.
- 6.2.6 Change Orders. For proposed changes to the Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. 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, 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 services provided hereunder, Organization shall pay the "Support and Maintenance Fee" as detailed in the SOW (Schedule "B"). 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. 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.
- 6.3.2 In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services ("Billable Fees") pursuant to this Agreement which include:
- (i) its direct travel expenses which are excluded from the total fees amount described in the Statement of Work, including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees;
 - (ii) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;

- (iii) a per diem rate of \$70.00 for 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.

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

- 6.3.3 Harris shall supply all Upgrades to Organization at no additional charge other than the payment of ongoing Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris, including additional training not covered by this Agreement and professional services for the installation and implementation of the Upgrade that will be subject to the Harris then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Statement of Work that will be subject to the terms of this Agreement.
- 6.3.4 All Updates of the Software and all those services listed in the Statement of Work which are included as part of Organization's Software support will be made available to Organization at no additional charge other than the payment of the Support and Maintenance Fee.
- 6.3.5 All payments for Support and Maintenance shall be net of any taxes, tariffs or other governmental charges. Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the sale, use or delivery of support and maintenance services shall be paid by Organization and such sums shall be due and payable to Harris upon receipt of an invoice therefore. Any taxes levied in relation to the services required for a Release shall be paid by Organization.

ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY

Section 7.1 Remedies and Liability

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

SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ORGANIZATION HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND OR ACTION BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND OR ACTION, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT, OR TORT.

Section 7.2 Intent

The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.

Section 7.3 Intellectual Property Indemnity

- 7.3.1 In the event there is a third party claim against Organization alleging that Organization's use of the Software in accordance with this Agreement constitutes an infringement of a Canadian or United States' patent, copyright, trademark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. This indemnity is only effective where (i) Organization has not made any 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 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 except with the prior written consent of Harris;
 - (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use;
 - (iii) use of the Software other than in compliance with this Agreement;
 - (iv) compliance with the Organization's written instructions or specifications; or
 - (v) use of the Software after notice from Harris that it should cease due to possible infringement.
- 7.3.3 Any breach by Organization of its covenants under 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 or Harris deems that it may be held to be infringing, Organization agrees that the only remedy available to it is that Harris shall be, at Harris' election, 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.
- 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 5.03 shall not apply to Third Party Software and Harris shall have the right to substitute the licensor of the Third Party Software to perform Harris' obligations hereunder and the Organization agrees to release Harris from any obligations related to such Third Party Software.

Section 7.4 Remedies

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

ARTICLE VIII: GENERAL

Section 8.1 Confidentiality

- 8.1.1 Duty Owed to the Organization: Harris acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, Harris agrees:
- (i) to maintain this information in confidence;
 - (ii) not to use this information other than in the course of this Agreement;
 - (iii) not to disclose or release such information;
 - (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of Harris; and
 - (v) to take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Harris, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- 8.1.2 Duty Owed to Harris: The parties agree that if the Organization breaches any term of Section 2.3 or Section 2.4 then Harris shall have the right to terminate this Agreement and the grant of Licenses herein forthwith without giving notice as set forth in Section 8.2.1.

Section 8.2 Termination

- 8.2.1 If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to
- (i) issue a written notice disputing the alleged default within such thirty (30) day period; or

- (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, this will constitute and “Event of Default” and the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- 8.2.2 If Organization has failed to pay the license fees in accordance with Article VI, then Harris shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization.
- 8.2.3 Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party:
 - (i) becomes insolvent;
 - (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or
 - (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

Section 8.3 Procedure on Termination

- 8.3.1 If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to Harris or delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify in writing that all of the Organization’s copies of the Software have either been returned to Harris or deleted.
- 8.3.2 If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- 8.3.3 All warranties related to the Software terminate upon the termination of this Agreement.

Section 8.4 Mediation

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

Section 8.5 Addresses for Notice

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

N. HARRIS COMPUTER CORPORATION at 1 Antares Drive, Suite 400, Ottawa, Ontario, Canada K2E 8C4

and in the case of the Organization, to: Town of Castle Rock at 100 N. Wilcox Street, Castle Rock, Colorado, U.S.A 80104

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

Section 8.6 Assignment

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

Section 8.7 Reorganizations

The Organization acknowledges that the License, Services, and Support Fees set out in this Agreement has been established on the basis of the structure of the Organization as of the Effective Date. To the extent that the Organization amalgamates, consolidates or undergoes any corporate reorganization or transition (a "Reorganization"), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional Concurrent Users or sites, Harris shall be entitled to receive, and the Organization shall pay, an additional License, Support or other fee based on the then prevailing License, Support and other Harris fee schedule in effect. The provisions of this Section 8.7 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 8.7 shall not apply where the Organization undergoes a Reorganization involving only other organizations that already have a valid License to use the same Software.

Section 8.8 Entire Agreement

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

Agreement with counsel, and this Agreement shall not be construed in favor of or against either Party on account of drafting.

Section 8.9 Section Headings

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

Section 8.10 Governing Law

This Agreement shall be governed by the laws of Colorado, 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 8.11 Trial by Jury

Organization and Harris hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or to any acts or omissions of Harris in connection 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 Counterparts

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

Section 8.15 Further Assurances

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

Section 8.16 Allocation of Risk

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

Section 8.17 Relationship

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

Section 8.18 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, Ontario, Canada K2E 8C4.

Section 8.19 Equitable Relief

Organization acknowledges and agrees that it would be difficult to compute the monetary loss to Harris arising from a breach or threatened breach of this Agreement and that, accordingly, Harris will be entitled to specific performance, injunctive or other equitable relief in addition to monetary damages in the event of a breach or threatened breach of this Agreement by Organization.

Section 8.20 Language

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

Section 8.21 Force Majeure

No default, delay or failure to perform on the part of 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, riots, civil disturbances, actions or inactions concerning

government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier or other disasters or events.

Section 8.22 Survival

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

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

N. HARRIS COMPUTER CORPORATION

Per:

Name:

Title:

Attest:

Town of Castle Rock, CO

Per:

Name:

Title:

Lisa Anderson, Town Clerk

Approved as to Form:

Michael J. Hyman, Town Attorney

Schedule “A” - Description of Software

Please refer to “Section 2.2.2 – Modules” of the Statement of Work (SOW) provided under separate cover.

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

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

Schedule "C" – Sample Change Order Form

NORTHSTAR IMPLEMENTATION PROJECT - CHANGE ORDER REQUEST FORM

ORGANIZATION NAME: HERE

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

Date:

Change Order Number:

Project Description: Org Name, NorthStar CIS Implementation

Requested By:

Scope of Change Requested:

Assumptions and Other Requirements:

Payment Terms:

Start Date:

Cost Impact:

This is a fixed price quote based on the scope described above. An additional, standard amount equal to 5% of the total fees billed have been included in the fee charged to cover technology, communication and administrative costs.

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

Approval (signature and date):

Organization Approval _____

Organization Project Manager _____

NorthStar Utilities Solutions Project Manager _____

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

Schedule “D” – Standard Support and Maintenance Guidelines

Help Desk Hours

Standard hours are from 8:00 am to 8:00 pm EST Monday through Friday, excluding designated statutory holidays. Support is available outside of regular business hours and is billable on an hourly basis (minimum number of hours will apply). Weekend assistance is available and must be scheduled in advance (and is billable on an hourly basis with a minimum number of hours that apply).

Holiday Schedule

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

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

Customer Care Program

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

“Software for Life” Guarantee

- Support on existing applications for life
- Software transferability and cost effective upgrades among Harris business units

TeamSupport Access 24/7

- Open new tickets
- View open/closed tickets for your organization
- Post Screen Recordings and Video Recordings to tickets
- View Knowledge Base Articles
- View Product Information
- Report on Ticket Metrics
- Find out the latest NorthStar News; Events; Product Releases

Ticket Priorities

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

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

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

Response Times

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

NorthStar's standard response times are as follows:

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

Standard Software Releases and Updates

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

Scheduled Assistance for Updates During Regular Business Hours

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

Third Party Support

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

Microsoft SQL Server

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

4Js (3rd Party graphical user interface software)

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

BitStew (As part of the CustomerConnect web portal)

- Installation & configuration for test and live CustomerConnect environments

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

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

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

Billable Support Services

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

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

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

Test Databases & Environments

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

Rates

Rates are subject to change on an annual basis. Quotations will be provided for all billable services.

Connection Information

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

How to Contact Us

Existing customers can login to our Customer Hub at:

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

Contacts for Escalations

1. Dawn Ivanochko
Manager, Support Services
1-888-847-7747 X2032
DIvanochko@harriscomputer.com
2. Diane Vieson
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Schedule “E” – Third Party Software Licenses and Third Party Software Terms

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