



Master
Subscription Agreement

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MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT (the “Agreement”) made as of the ____ day of _____, _____ (the “Effective Date”).

BETWEEN: N. HARRIS COMPUTER CORPORATION (through its Advanced Utility Systems division) (“**Harris**”)

- and -

City of Corona (“**Organization**”)

WHEREAS, Harris wishes to grant to the Organization a license to utilize certain Software Services consisting of the right to use the Software (as defined herein) as hosted by Harris on behalf of Organization in a dedicated third party hosting environment on a subscription basis, as further defined hereinafter, and Organization wishes to purchase such a license on such ongoing Software as a Service (“SaaS”) basis;

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

ARTICLE I: INTERPRETATION

Section 1.1 Definitions

- 1.1.1 “**Annual SaaS Fees**” means annual subscription fees for Software Services licensed on a subscription basis as set out in Schedule “A” to this Agreement
- 1.1.2 “**Change Order**” means a duly executed change order between the Customer and Harris evidencing their agreement to add, subtract or change particular aspects of the Services or the, Professional Services or Support Services.
- 1.1.3 “**Concurrent Users**” means the total number of Users who can simultaneously access the Software at any one time as specified in Schedule “A”.
- 1.1.4 “**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 for its intended purposes.
- 1.1.5 “**Confidential Information**” means the Software, Sublicensed Software, and all information or material that is confidential in nature or that either party treats 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 marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from

a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction. Confidential Information of Harris may include, without limitation, the Software Services, and any information with respect to the Software Services that Harris or its third-party service provider may provide to Organization from time to time, including without limitation, and all information disclosed by Harris relating to its facilities, computer systems and product. Confidential Information does not include any Data.

- 1.1.6 **“Customer Engagement Portal Terms”** means the terms and conditions for the Infinity CEP to be entered into between Organization and its customers as set out at <https://www.coronaca.gov/> which must contain the Hosted Portal Minimum Terms.
- 1.1.7 **“Data”** means all data, including without limitation all text, sound, video, or image files, and software, that are provided by or on behalf of Organization to Harris or its service provider and all other content transmitted, posted, received or created through Organization's or its customers' use of the Services, the Software or the Sublicensed Software. Data does not include Professional Services Data.
- 1.1.8 **“DPA”** shall have the meaning set out in Schedule “C” to this Agreement.
- 1.1.9 **“Data Protection Requirements”** means the GDPR, Local EU/EEA Data Protection Laws, and any applicable laws, regulations, and other legal requirements relating to (a) privacy and data security; and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any Personal Information.
- 1.1.10 **“Data Storage Fees”** means the fees associated with the storage of Data by Harris on behalf of the Organization as set out in Schedule “A” to this Agreement.
- 1.1.11 **“Data Export Limit”** means the amount of Data that may be exported or downloaded by Organization from the Services as specified in Schedule “A” to this Agreement.
- 1.1.12 **“Data Storage Limit”** means the amount of Data storage purchased by Organization as specified in Schedule “A” to this Agreement.
- 1.1.13 **“Data Export Fees”** means the fees associated with the export or download of Data from Harris by Organization as set out Schedule “A” to this Agreement.
- 1.1.14 **“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.
- 1.1.15 **“Fees”** means the Annual SaaS Fees, Professional Services Fees, Data Storage Fees, Data Export Fees, and all other fees as set out in the SOW.
- 1.1.16 **“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.1.17 **“Hosted Portal Minimum Terms”** means the following Sections of this Agreement: Sections 1.1.3, 2.3, 2.4.1, 2.4.2, 3.5.2, the terms of Section 5.2 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 CEP , 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”.

- 1.1.18 **“Infinity Customer Engagement Portal” or “Infinity CEP”** means the Silverblaze customer engagement portal that forms part of the Silverblaze Software which can be configured by the User authorized by the Organization to perform administrative level functions to allow customers of Organization access via the Internet to check account details and log requests for service.
- 1.1.19 **“Infinity CEP Documentation”** means the user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding Infinity CEP regardless of the media on which it is provided.
- 1.1.20 **“Infinity CEP Software” or “Silverblaze Software”** means the object code version of the Silverblaze software products listed in Schedule “A” and includes any Updates or Upgrades to the Silverblaze Software that have been provided to Organization as part of Support and Maintenance Services.
- 1.1.21 **“Infinity CIS Software” or “Infinity CIS”** means the object code version of the Harris customer information system software product listed in Schedule “A” and includes any Update(s) or Upgrade(s) to the Infinity CIS that have been provided to Organization.
- 1.1.22 **“Infinity FWM Documentation”** means the user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding Infinity FWM regardless of the media on which it is provided.
- 1.1.23 **“Infinity FWM Software” or “Infinity FWM”** means the object code version of the Harris field workforce management software 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.
- 1.1.24 **“Local EU/EEA Data Protection Laws”** means any subordinate legislation and regulation implementing the GDPR.
- 1.1.25 **“License”** means the license rights granted to the Organization pursuant to Article II hereof.
- 1.1.26 **“Maximum Accounts”** means the maximum number of accounts City is authorized to use the Software as specified in Schedule “A”, with an account being identified as a discrete address.
- 1.1.27 **“Maximum Meters”** means the maximum number of meters with which Customer is authorized to use the Software as specified in Schedule “A”.
- 1.1.28 **“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.
- 1.1.29 **“Personal Information”** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.1.30 **“Professional Service(s)”** means those implementation, training, consulting, data conversion and professional service(s) provided by the Harris Professional Services team as further described in Section 3.1 and Schedule “A” to this Agreement.
- 1.1.31 **“Professional Services Data”** means all data, including all text, sound, video, image files or software, that are provided to Microsoft, by or on behalf of Organization (or that Organization authorizes Harris

to obtain from the Services and which Harris provides to Microsoft or that Organization authorizes Microsoft to obtain from the Services) or otherwise obtained or processed by or on behalf of Microsoft through an engagement with Harris or Organization to obtain Professional Services. Professional Services Data includes Support Data.

- 1.1.32 **“Professional Services Fees”** means the Professional Service(s) fees set out in a Statement of Work to be paid by Organization for the Professional Services.
- 1.1.33 **“Release”** means an Update and an Upgrade.
- 1.1.34 **“Services” and “Software Services”** each means the web-based service(s) to be provided by or on behalf of Harris under this Agreement that includes hosting, monitoring, operating and maintaining the Software and if applicable, the Sublicensed Software at a site owned or controlled by Harris’s service providers and the delivery of exclusive access via the Internet to Organization to use the Software and if applicable the Sublicensed Software granted to Organization pursuant to Section 2 hereof. The Services shall also include storing all Data entered and maintained by Users through use of the Services subject to the Data Storage Limit and Data Export Limit.
- 1.1.35 **“Service Generated Data”** means data generated or derived by Microsoft through the operation of the Services. Service Generated Data does not include Data, Diagnostic Data, or Professional Services Data.
- 1.1.36 **“Silverblaze”** means the Silverblaze business unit of Harris.
- 1.1.37 **“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, Infinity FWM, and the Infinity CEP Software and includes any Update(s) or Upgrade(s) to such Harris software products that have been provided to Organization. Third Party Components and Sublicensed Software are not included in the definition of Software.
- 1.1.38 **“SOW” or “Statement of Work”** means a written statement of work executed by an authorized representative of each of the parties which (a) may be attached to this Agreement as Schedule “B” or (b) in the form attached as Schedule “B” and which references this Agreement.
- 1.1.39 **“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.
- 1.1.40 **“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.
- 1.1.41 **“Support Data”** means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Organization (or that Organization authorizes Harris to obtain from the Services and which Harris provides to Microsoft or that Organization authorizes Microsoft to obtain from the Services)) through the provision of any support services for the Services. Personal Information provided to Microsoft by, or on behalf of, Organization in connection with the provision of technical support is also Support Data. Support Data is a subset of Professional Services Data.
- 1.1.42 **“Support Services”** means those support services to be provided by the Harris Support team as further described in Schedule “D” to this Agreement.
- 1.1.43 **“Third Party Components”** means any third party telecommunications, energy/utility transportation, managed facilities and/or software applications and services that Harris or its service providers has

licensed or purchased and provided access to or otherwise made available to Organization as part of the Services or the Software as well as any Third Party Components that is required to be obtained by Organization directly from the applicable third party vendor in accordance with this Agreement. Third Party Components includes but is not limited to Microsoft Azure® (unless and until otherwise indicated by Harris in accordance with the terms of this Agreement).

- 1.1.144 **“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 and Schedule “F” shall be amended to include additional Third Party Terms as applicable.
- 1.1.145 **“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.
- 1.1.146 **“Universal License Terms”** shall have the meaning set out in Schedule “C”.
- 1.1.147 **“Update”** means any published changes, additions or corrections to the applicable 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).
- 1.1.148 **“Upgrade”** is a major overhaul of the applicable 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).
- 1.1.149 **“User”** means any employee of Organization or any of Organization’s agents who are authorized by Organization in writing to access and use the Services.

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” Software Description
 - Fees & Payment Schedule
- Schedule “B” – Statement of Work (“SOW”)
- Schedule “C” – Third Party Components Terms and Conditions
- Schedule “D” – Services Availability and Support Services
- Schedule “E” – Third Party Terms
- Schedule “F” – Sample Change Order

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”, and “D”, 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 “C” or “E”, the terms and conditions of Schedule “C” or “E”, as applicable, shall control.

ARTICLE II: SOFTWARE LICENSES

Section 2.1 Grant of Licenses

2.1.1 General License. The parties agree that execution of the Statement of Work which shall detail Harris’s installation and implementation services for the Software and if listed in Schedule “A”, the Sublicensed Software, is a condition precedent to the effectiveness of this Agreement and that the Statement of Work shall be entered into no later than contemporaneously with the execution of this Agreement. Subject to the terms and conditions of this Agreement, including without limitation, payment by Organization of all Fees, Harris hereby grants to Organization a personal, non-exclusive, non-transferable limited right during the Term:

- (a) to allow the maximum number of Concurrent Users to access and use the Infinity CIS Software and Infinity CEP Software as part of the Services up to the Maximum Accounts on an annual SaaS basis and in accordance with the Documentation solely for Organization’s internal business purposes;
- (b) to allow the maximum number of Concurrent Users to access and use the Infinity CEP Software as part of the Services up to the Maximum Meters on an annual SaaS basis and in accordance with the Documentation solely for Organization’s internal business purposes;
- (c) to allow the maximum number of Named Users specified in Schedule “A” to access and use the Infinity FWM and Sublicensed Software, up to the Maximum Accounts, as applicable, as part of the Services on an annual SaaS basis and in accordance with the Infinity FWM Documentation and Sublicensed Documentation, as applicable, solely for Organization’s internal business purposes;
- (d) to use, copy and modify the Documentation solely for the purpose of creating and using internal training materials relating to the Services;
- (e) if the Infinity CEP Software is listed in Schedule “A”, to authorize Organization’s customers to access and use the Software Services for the limited purpose of accessing and using the Infinity Customer Engagement Portal provided that such customers agree to be bound by the Customer Engagement Portal Terms; and
- (f) to use, and copy the Infinity CEP Documentation, 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 on any such copies.

a2.1.2 As between Harris and Organization, Harris reserves all rights, title and interest in and to the Software, Sublicensed Software, and Services not expressly granted herein and the License specifically excludes all such reserved rights, title and interest.

- 2.1.3 Organization acknowledges and agrees that any breach of this Agreement by its Users shall constitute a breach by Organization.
- 2.1.4 **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.
- 2.1.5 **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.

Section 2.2 Term of Agreement

This Agreement commences 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. Harris shall provide written notice to Organization of any new terms and prices ninety (90) days before the end of the then current Term, and Organization or Harris may choose to terminate this Agreement by non-renewal by giving the other party written notice of its intention not to renew within sixty (60) days of the end of the then current Term. The Initial Term and Renewal Term(s) shall collectively be referred to as the "Term".

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 or Sublicensed Software for any purpose other than in connection with Organization's primary business or operations; (ii) use the Hosting Services in

any way prohibited by law, governmental order or decree or to violate the rights of others; (iii) disassemble, decompile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, Sublicensed Software, or Services, or otherwise attempt to reconstruct or discover the source code of the Software, Sublicensed Software, or Services, or attempt to otherwise convert or alter the Software, Sublicensed Software, or Services into human readable code, except and only to the extent that applicable law expressly permits, despite this limitation; (iv) modify or create derivative works of the Software or Sublicensed Software; (iv) give away, rent, lease, lend, or otherwise sell, re-sell, pledge, distribute or otherwise transfer the license rights granted under this Agreement or otherwise use the Software Services except as expressly permitted by this Agreement without the prior written consent of Harris; (v) use the Services to mine cryptocurrency without Harris' prior written approval, or to spam or distribute malware; or (vi) take any actions that would cause the Software, Sublicensed Software, or Services 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 Services. No third party, other than (a) duly authorized agents or employees of Organization; and (b) Organization's customers accessing and using the Customer Engagement Portal; authorized pursuant to Article 2 hereunder, shall have access to or use of the Software Services.

- 2.3.2 The Software, Sublicensed Software and related materials supplied by Harris are protected by copyright, trade secret, trademark, and other intellectual property laws. The Software and Sublicensed 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, Sublicensed Software and related materials supplied by Harris.
- 2.3.3 Organization may not modify, translate, adapt, alter, or create derivative works of the Documentation, Infinity FWM Documentation, or Sublicensed Documentation; however, Organization may duplicate Documentation, Infinity FWM Documentation, and Sublicensed Documentation, at no additional charge, for Organization's internal use so long as all required proprietary markings are retained on all duplicated copies.
- 2.3.4 Organization shall not copy, frame or mirror any part or content of the Software Services, other than copying or framing on Organization's own intranets or otherwise for Organization's own internal business purposes. Organization shall not access the Software Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software or Sublicensed Software; or (iii) knowingly allow access to any competitor of Harris.
- 2.3.5 Organization shall not knowingly transmit, upload, post, display, distribute, store or otherwise publish, through use of the Software Services, any content, data, material or information that: (i) contains a software virus, Trojan horse, worm, time bombs, cancelbots or other harmful or deleterious computer code, files, programs or content that may damage, adversely affect any hardware or software, or that intercepts or misappropriates any system, program, data or information; (ii) is threatening, defamatory, libelous, harassing, abusive, profane, is an invasion of privacy, offensive, obscene, harmful or otherwise objectionable (including without limitation content that constitutes child pornography, relates to bestiality, or depicts non-consensual sex acts); (iii) infringes, misappropriates or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property, proprietary right or other rights of any third party; (iv) violates any law, statute, ordinance or regulation, or that may be

- harmful to Harris or its service provider's operations or reputation (and shall not perform any activities that are illegal, fraudulent or may result in any of the foregoing); or (v) includes unsolicited bulk e-mails, or other messages, promotions, advertisements or solicitations ("spam") and Organization shall not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission.
- 2.3.6 Organization shall not interfere with, attempt to gain unauthorized access to, work around any technical limitations in the Services that allow Organization to use it in certain ways, or disrupt or violate the security or integrity of any service, device, computer, communication system, software application, network, account, data, the Software Services or networks connected to the system used to provide the Software Services or use the Software Services in any way that would provide harm to it or impair anyone else's use of it, and Organization may not download or otherwise remove copies of software or source code from the Software Services except as explicitly authorized. Examples include, without limitation, attempting to probe scan, or test the vulnerability of a system or breach any security or authentication measures used by a system, monitoring of data or traffic on a system without permission, falsification of origin, forging TCP-IP packet headers, e-mail headers, or any part of message describing its origin or route (use of aliases and anonymous remailers are not prohibited by this provision). Additional prohibited activities include:
- i. Monitoring or Crawling. Monitoring or crawling of a system that impairs or disrupts the system being monitored or crawled.
 - ii. Denial of Service (DoS). Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
 - iii. Intentional Interference. Interfering with the proper functioning of any system, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
 - iv. Operation of Certain Network Software Services. Operating network Software Services like open proxies, open mail relays, or open recursive domain name servers.
 - v. Avoiding System Restrictions. Using manual or electronic means to avoid any use limitations placed on a system, such as access and storage restrictions.
- 2.3.7 Organization shall not use the Software Services in any situation where failure of the Services could lead to death or serious bodily injury to any person, or to severe physical or environmental damage.
- 2.3.8 Organization shall not provide the results of using the Software Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- 2.3.9 Organization will not access the Software Services in a way intended to avoid incurring fees or exceeding usage limits or quotas, including but not limited to the Data Storage Limit.
- 2.3.10 Organization shall not assist or encourage anyone to do any of the above.
- 2.3.11 Storage and retention of Data shall be for the time periods set forth in Schedule "A" & Schedule "B" of the Agreement (or as otherwise mutually agreed).
- 2.3.12 The storage and retention of Data is subject to the Data Storage Limit based on the amount of Data Storage Fees paid for by Organization.
- 2.3.13 The export and download of Data is subject to the Data Export Limit based on the amount of Data Export Fees paid for by Organization.

Section 2.4 Ownership of Software and Data and Related Terms and Conditions

- 2.4.1 **By Harris.** Harris, its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Services, Software, Sublicensed Software, and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Organization shall acquire no right whatsoever to all or any part of the Services, Software, Sublicensed Software, or underlying software except the limited right to access and use the Services in accordance with the terms of this Agreement and Harris, its service providers and its licensors reserve all rights not expressly granted to Organization. Organization must fully reproduce any copyright or other notice marked on any part of the Documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Organization hereby grants to Harris a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services, Software, Sublicensed Software, and underlying software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Organization relating to the operation of the Services, Software, or Sublicensed Software ("**Feedback**"). Organization warrants that i) it will not provide Feedback that is subject to a license requiring Harris or Microsoft to license anything to third parties because Harris or Microsoft exercises any of the above rights in Organization's Feedback; and 2) it owns or otherwise controls all of the rights to such Feedback and that no such Feedback is subject to any third-party rights (including any personality or publicity rights).
- 2.4.2 **Organization Data.** As between Harris and Organization, Data will remain the sole and exclusive property of Organization. Organization is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Organization grants to Harris, its service providers (as applicable) and licensors a world-wide, non-exclusive, royalty-free license to access, use and otherwise process the Data and Professional Services Data for the purpose of performing the Services, and Professional Services respectively, and for Microsoft's legitimate business operations as detailed and limited in the DPA. Except as specified in this Agreement, Harris may not access the Data or Professional Services Data for any other purpose without the express written consent of Organization. Access to Data by any outside party shall only be in accordance with the terms of this Agreement, the DPA or where required by law. Organization agrees that this Agreement (including the DPA and Universal License Terms) along with the Documentation and Organization's use and configuration of features in the Services, are Organization's complete and final documented instructions to Harris and Microsoft for the processing of Personal Information. Organization agrees that this Agreement (including the DPA and Universal License Terms) along with any statement of work agreed between the parties, are Organization's complete and final documented instructions to Harris and Microsoft for the processing of Personal Information contained with the Data and Professional Services Data. Any additional or alternate instructions must be agreed to according to the process for amending this Agreement set out hereinafter or the Statement of Work.
- 2.4.3 Organization grants to Harris a world-wide, non-exclusive, royalty-free license to aggregate or compile any and all Data with the customer data of other customers using the Services so long as such aggregation or compilation omits any data that would enable the identification of Organization, its clients or any individual, company or organization ("**Aggregated Data**"). Harris shall have a worldwide,

perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Organization grants Harris the right to access Data to provide feedback to Organization concerning its use of the Services. Organization likewise authorizes Harris to disclose the fact that Organization is a customer of Harris and uses the Services.

2.4.4 In addition to any other restrictions on Harris' use of the Data, both parties agree that the Data may be subject to privacy laws providing for the owners of the Data to review such Data or to challenge the collection and storage of the Data. Organization shall indemnify and reimburse Harris in relation to all reasonable fees and other disbursements paid by Harris to comply with such requests, whether by an individual or a government body, or to challenge such requests at either Harris' or Organization's request. Organization represents and warrants to Harris that as of the Effective Date no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software or Sublicensed Software.

2.4.5 **Data and Privacy Policy of Organization.**

Organization represents and warrants to Harris that:

- i. Data, Professional Services Data, and Personal Information, that is either provided to or acquired by Harris and/or its service providers from Organization is owned exclusively by Organization and that the Organization has full right and title to provide the Data, Professional Services Data and Personal Information to Harris and its service providers;
- ii. Data, Professional Services Data and Personal Information, that is either provided to or acquired by Harris is subject to a privacy policy in effect as of the Effective Date and Organization or other third party owners of the Data or Personal Information have provided to Organization their written consent for its collection, use and storage by Harris and its third-party service providers in accordance with this Agreement and in any jurisdiction in the United States;
- iii. Organization complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data, Professional Services Data and Personal Information collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Organization will not provide Harris or its service providers with Data or Personal Information of any kind for which Harris or its service providers either have no need or do not have the right to collect, use and store under the terms of this Agreement.

2.4.6. **Data Location.** As of the Effective Date, Harris's third party service provider of the Software hosting services is Microsoft® and Harris uses Microsoft's Azure® online services to host the Software and if applicable, the Sublicensed Software. To the extent permitted by applicable law and except as described in the Universal License Terms and the DPA, Data, Professional Services Data and Personal Information that Microsoft processes on Organization and Harris's behalf may be transferred to, and stored and processed, in the United States. Organization appoints Harris and Microsoft to perform any such transfer of Data and Personal Information and to store and process Data and Personal Information to provide the Services. Harris shall use commercially reasonable efforts to work with Microsoft personnel to configure the Services to store Data on Virtual Machines using Locally-Redundant Storage (LRS).

2.4.7. **Access to Data; Subcontracting.** Subject to Section 3.6, at all times during the Term, Organization will have the ability to request a copy of, and/or delete Data stored in the Services. Harris' service provider may engage third parties to provide certain services on its behalf and Organization consents to the engagement of such third parties as subprocessors, which shall constitute Organization's prior written consent to the subcontracting by Harris and its service provider of the processing of Data, Professional Services Data and Personal Information if such consent is required under the GDPR or other applicable 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 Components

- 2.6.1 Organization acknowledges that in order to provide the Services Harris may be required to purchase access to Third Party Components. Organization agrees to comply with and be bound by the additional terms and conditions applicable to Third Party Components set out in Schedule "C" to this Agreement. Organization further acknowledges that the availability of such Third Party Components is based solely on the best information available to Harris and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Harris to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Harris's control, then (a) Harris shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Components; and (b) Harris may in its sole discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components, subject to the right of Organization to terminate set out in Section 8.2.5. If any of the terms and conditions of Harris's agreement with its third party service provider or any other provider or licensor of Third Party Components are modified by such provider, Harris may modify the terms and conditions of this Agreement effective immediately upon written notice to Organization, subject to the right of Organization to terminate set out in Section 8.2.5.
- 2.6.2 Harris currently uses specific service provider(s) identified in Section 2.4.6 or on SOW's that act(s) both as a hosting facility and provides additional third-party software support to Harris. Without limiting Harris' rights set out in Section 2.6.1, Organization acknowledges that Harris may change the third-party service provider(s) at any time with notice to the Organization. The Organization further acknowledges that the third-party service provider may require that the Organization agree to certain additional terms in order for Harris to allow Organization and its Users to have access to the Software

and, if applicable, Sublicensed Software on the third-party provider's hosting platform. Harris may, from time to time, alter the hosting facility service provider by providing notice to the Organization. Where a different third-party provider provides such services then alternate policies and terms will apply to Organization's use of the Software Services which terms the Organization will need agree with as a condition precedent of using the Software Services from a time provided by Harris to the Organization. Lastly, if the Organization requires information related to the third-party provider's capabilities, accreditations, and other information regarding a third-party provider, the Organization must request such information directly from Harris. Harris will make diligent efforts to request that the third party provider provide such information for the Organization but ultimately, Harris is not obligated to provide any such information to the Organization either (i) where the third party provider refuses to provide the information to Harris or (ii) where the Organization refuses to agree to terms that the third party provider has requested from the Organization prior to providing the information either directly or indirectly through Harris (such terms, for example, an NDA).

- 2.6.3. Organization agrees that it shall not seek legal action directly against a third-party provider without the prior written consent of Harris in respect of an issue related to the Software Services.

ARTICLE III: SERVICES

Section 3.1 Harris' Professional 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 "**Professional 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 and Sublicensed Software.
- 3.1.2 Install the Software and Sublicensed Software for Organization's use 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 Professional Services by Organization is allowed for any reason if done in writing more than fourteen (14) days in advance of such Professional 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 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. 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. Any warranties 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 provided by Harris in respect of the Professional Services, the Software Services, and this Agreement are found in Article V.

Section 3.2 Performance by Harris – Professional Services

- 3.2.1 Manner of Performance -- Harris shall perform the Professional 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 Professional Services and Services shall be performed. Harris will consult with the Organization on its methodology, manner and means. While Harris will consider the Organization's input regarding staffing and other decisions, as an independent contractor, Harris will have sole control of its staffing and other key decisions related to its performance hereunder.
- 3.2.3 Conduct on Organization's Premises -- The Professional Services shall be performed with the Organization's full cooperation as agreed, whether on the premises of the Organization or at an alternative location. When working on the Organization's premises, Harris personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- 3.2.4 Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- 3.2.5 Independence -- As an independent consultant, Organization retains Harris and its employees and agents on an independent contractor basis and not as an employee.
- 3.2.6 Coordination of Services -- Harris agrees to coordinate with Organization staff in the performance of Professional Services and Services and to be available for consultation at all reasonable times.
- 3.2.7 To the fullest extent permitted by law, but subject to the limitation of liability in this Agreement, Harris shall defend, indemnify and hold the Organization, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of, pertaining to, or incident to any alleged willful misconduct or negligent acts, errors or omissions of Harris, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Professional Services, including without limitation the payment of all expert witness fees and attorneys fees and other related costs and expenses.

3.2.8 To the extent that Harris or any officer, official or employee of Harris will be physically present on any property owned or operated by the Organization in connection with this Agreement, Harris shall maintain insurance in accordance with this Section.

Minimum Requirements. Harris shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Harris, its agents, representatives, employees or subconsultants. Such insurance shall meet at least the following minimum levels of coverage:

Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned); (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance; and (4) Cyber Liability (included in the Professional E&O policy): .

Minimum Limits of Insurance. Harris shall maintain limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury, advertising injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

Cyber Liability. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Harris in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Insurance Endorsements. The insurance policies shall contain or be endorsed (amended) to include the following provisions:

General Liability. The general liability policy shall state that: (1) the Organization, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of Harris, including materials, parts or equipment furnished in connection therewith (the endorsement form shall be at least as broad as ISO Form CG 20 10 11 85 or both CG 20 37 and one of the following: CG 20 10, CG 20 26, CG 20 33 or CG 20 38); and (2) the insurance coverage shall be primary insurance coverage as respects the Agency, its directors, officials, officers, employees, agents, and volunteers (the endorsement form shall be at least as broad as ISO CG 20 01 04 13). Any insurance or self-insurance maintained by the Organization, its

directors, officials, officers, employees, agents, and volunteers shall be excess of Harris's insurance and shall not be called upon to contribute with it in any way.

Waiver of Subrogation – Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Organization, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work or services performed by Harris.

All Coverages. If Harris maintains broader coverage and/or higher limits than the minimums shown above, the Organization is entitled to the broader coverage and/or higher limits maintained by Harris. Thus, any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

Other Provisions; Endorsements Preferred. Harris shall endeavor to provide endorsements regarding the following provisions, but nonetheless understands, acknowledges and agrees that the following provisions shall apply and that failure to comply shall be considered to be a breach of this Agreement by Harris:

Waiver of Subrogation – Applies to Worker's Compensation, Auto Liability and Commercial General Liability. Harris hereby waives all rights of subrogation any insurer of Harris's may acquire against the Organization, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of any insurance policy which arise from work or services performed by Harris. Harris understands, acknowledges and agrees that this provision is in full force and effect even if the Organization does not receive a waiver of subrogation endorsement from the insurer.

Notice. Harris shall either: (1) require its insurer to endeavor to provide thirty (30) days prior written notice to the Organization before coverage is suspended, voided, or canceled; or (2) endeavor to notify Agency in writing that such notice is not available and forward any notice of such actions to the Organization within two (2) business days from date of receipt by Harris. Harris understands, acknowledges and agrees that this provision is in full force and effect even if the Organization does not receive a waiver of subrogation endorsement from the insurer.

Claims Made Policies. The following provisions shall apply to all policies that provide coverage on a claims-made basis: (A) the retroactive date must be shown and must be before the date on which any services under this Agreement commence; (B) the insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the services; and (C) if coverage is canceled or not renewed and is not replaced with another claims-made policy with a retroactive date prior to the date on which any services under this Agreement commence, Harris must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the services.

Acceptability of Insurers. Unless under the circumstances a different rating is otherwise acceptable to the Organization in its sole and absolute discretion, insurance is to be placed with insurers which are satisfactory to the Agency and which meet either of the following criteria : (1) an insurer with a current A.M. Best's rating no less than A-:VII and licensed as an admitted insurance carrier in California; or (2) an insurer with a current A.M. Best's rating no less than A-:X and authorized to issue the required policies in California.

Verification of Coverage. Harris shall furnish Organization with original certificates of insurance as well as amendatory endorsements effecting coverage required by this Agreement. The certifications of insurance and endorsements as defined in Schedule G must be received and approved by the Organization before any work or services commence under this Agreement; provided, however, that failure to obtain the required documents prior to the commencement of services shall not waive Harris's obligation to provide them.

Reporting of Claims. Harris shall report to the Organization, in addition to Harris's insurer, any and all insurance claims submitted by Harris in connection with the services under this Agreement.

Section 3.3. Performance by Harris - Software Services

3.3.1 Harris shall provide all facilities, equipment, and software required to make the Software Services available. Harris shall have the right to manage all resources used in providing the Software Services, as Harris deems appropriate.

3.3.2 Harris shall use commercially reasonable efforts to make the Software Services available to Users twenty-four (24) hours per day, seven (7) days per week; subject to the terms further defined in Schedule "D" and as outlined in any relevant SOW. Any Harris liability to Organization, in the unlikely event that said Software Services becomes unavailable in violation of Schedule "D", is set forth in said Schedule. Any request for credit must be received by Harris in writing within 10 days of the date that the Services were unavailable in accordance with the terms of Schedule "D" otherwise all rights to any credits shall be deemed waived.

3.3.3 Harris reserves the right to have additional User acceptance criteria that may be applied to Users and Organization's customers who use the Customer Engagement Portal prior to their ability to have access to the Software Services. Harris shall inform Organization of such criteria but Harris shall be free to implement such criteria at any time without prior written warning to the Organization and/or to Users or Organization's customers. Where Users or Organization's customers do not accept such and/or agree to such criteria, Harris reserves its rights to not grant to such Users and/or Organization's customers access to the Software Services. Harris reserves its rights to restrict access to the Software Services to Users and/or Organization's customers for any violation of any additional terms and conditions to which such Users and/or Organization's customers accept/agree to access the Software Services.

3.3.4 Harris shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure availability of the Software and if applicable, the Sublicensed Software. Organization, not Harris, shall be responsible for creating and maintaining all User and Organization's customer account information and for performing all other application-level system administration functions that are available within the Software and Sublicensed Software.

Section 3.4 Performance by Organization

3.4.1 **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.

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

3.4.3 **Passwords.** Organization agrees to comply with all Harris security policies and procedures as provided to it and amended from time to time. Organization and its Users and customers shall be responsible for keeping any and all passwords, user ID's, log-in credentials and private keys assigned to its Users and customers secret and confidential. User ID's, passwords, login-in credentials and private keys are for Organization's internal use only and Organization may not sell, transfer or sublicense them to any other entity or person except that Organization may disclose its private key to its agents performing work on its behalf. Except to the extent occurring as a result of a Data breach on Harris's computer systems or network, Organization agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Organization's or its Users' passwords and user ID's or log-in credentials and private keys, as well as any obligation that may result from such use. Organization agrees to notify Harris in writing if it believes that a password has been stolen or might otherwise be misused. Organization agrees to notify Harris immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Organization.

3.4.4 **Users.** Organization is responsible for: (i) the actions of Users using the Software Services in accordance with this Agreement; (ii) ensuring that Users and Organization's customers who use the Customer Engagement Portal agree to any further terms and conditions as may be provided by Harris from time to time for Users (and Organization's customers); and (iii) informing Harris of any information about Users' and Organization's customers' actions that may affect either the Software Services or third party data contained in or used by the Software Services, or Harris's ability to provide the Software Services as contemplated by this Agreement.

3.4.5 **Compliance with Laws.** The Services are subject to U.S. export jurisdiction. Organization represents and warrants to Harris that it and its Users and customers will at all times be in compliance with all applicable local, state, provincial, federal and international laws, rules and regulations including, but not limited to, those laws regarding restrictions on exports (including the International Traffic in Arms Regulations, the U.S. Export Administration Regulations end-user, end use and destination restrictions by Canadian, U.S. and other governments related to the Harris and its service providers' products, services and technologies), biometric data, defamation, libel, harm to reputation, privacy, security, data protection, misuse or failure to protect personal information, violation of secrecy, confidentiality (including confidentiality of communications), unfair competition, Data Protection Requirements and other situations which could generate liability. Organization is responsible for determining whether the Services are appropriate for storage and processing of information subject to any specific law or regulation and for using the Services in a manner consistent with Organization's regulatory and legal obligations, including without limitation, Organization is responsible for obtaining any necessary license or other authorization to export, re-export, or transfer the Services. Organization represents that it, its Users, and financial institutions used to pay Harris under this Agreement, are not named on any list of prohibited or restricted parties, including but not limited to a U.S. government exclusion list, designated nationals or similar list, and Organization further warrants that it shall immediately discontinue use of the Services if Organization is notified that Organization or any User or customer using the Services becomes placed on any such list. Organization is responsible for responding to any request from an authorized third party regarding

Organization's use of the Services, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws.

- 3.4.6 **Organization Equipment.** Organization agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Organization's facilities required for Users to access and use the Software Services and shall notify Organization's customers of such requirements in order to use the Customer Engagement Portal. Harris shall not be responsible for the operation of any Internet, network or other communication services. Organization further acknowledges that access to and the operation of the Software Services requires Organization's and Users' hardware to be of sufficient quality, condition and repair, and Organization agrees to and/or to ensure that Users' and maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense.

Section 3.5 Data Security Provisions Related to Any Software Services Purchased

- 3.5.1 **Data Security.** Organization acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Organization's, its Users', and its customers' (as well as Harris' and its service providers') computer systems, networks and any and all information stored therein. Organization is solely responsible for making an independent determination as to whether the technical and organizational measures for the Services meet Organization's requirements, including any and all of its security obligations under applicable Data Protection Requirements. Organization acknowledges and agrees that (taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of the processing of its Personal Information as well as the risks to individuals) the security practices and policies implemented by Harris and its service providers provide a level of security appropriate to the risk with respect to its Personal Information. Organization is responsible for implementing and maintaining privacy protections and security measures for components that Organization provides or controls, including without limitation, A) application level privacy and security settings within the Software and Sublicensed Software and B) ensuring that (i) Organization's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Harris's servers; and (iii) Data is encrypted. Some content or Data may be subject to governmental regulations or may require security measures beyond those specified by Harris for an offering as set out in Schedule "C." Organization will not input or provide such content or Data unless Harris has first agreed in writing to implement additional required security measures. Details regarding Harris' service provider's security measure and practices are available at the links set out in Schedule "C" to this Agreement.
- 3.5.2 HARRIS AND ITS SERVICE PROVIDER DO NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. HARRIS AND ITS SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF ORGANIZATION'S OR ITS USERS' OR CUSTOMERS' CONNECTION TO OR USE OF THE INTERNET, AND HARRIS SHALL NOT BE RESPONSIBLE FOR ANY USE BY ORGANIZATION OR ANY USER OF ORGANIZATION'S INTERNET CONNECTION (OR ANY USE BY ANY OF ORGANIZATION'S CUSTOMERS OF ITS INTERNET CONNECTION) IN VIOLATION OF ANY LAW, RULE OR REGULATION. FURTHER, HARRIS DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY SERVICE PROVIDERS.

- 3.5.3 **Disclosure of Security Breach.** Harris is advised of the requirements of the California Civil Code, section 1798.29, requiring notification to any resident of California in the event of breach of the security of the Software. Notwithstanding Section 3.5.2 above, Harris agrees it will notify the Organization immediately (and in no event more than 24 hours) upon confirmation of the occurrence of any breach in the security of Data that may potentially trigger the need for security breach notifications pursuant to California Civil Code section 1798.29 or similar State or Federal law. The parties agree that the Organization will control the timing and content of any required security breach notification
- 3.5.4 **Cyber Liability Insurance.** Harris shall at its expense, procure and maintain for the duration of this Agreement Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Harris in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Section 3.6 Suspension of Access and Use Rights of Software Services

- 3.6.1 In addition to its termination rights under Section 8.2, Harris may immediately suspend, restrict or limit Organization's access to all or any portion of the Software Services if Harris determines:
- i. That Organization's or any of its Users' or customers has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct:
 - (a) poses a security risk to the Software Service or any third party,
 - (b) poses any risk of any kind or nature to Harris' or its service provider's business or other customers;
 - (c) could adversely impact Harris' or its service provider's systems, network, the Software Services or the systems or data of any other customer,
 - (d) could subject Harris, its service provider or their respective affiliates or any third party to liability, or (iv) could be fraudulent;
 - ii. Organization or any User or customer is in breach of this Agreement;
 - iii. Organization is in breach of its payment obligations for the Annual SaaS Fees; or
 - iv. Organization has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Organization's assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

Harris will use reasonable efforts to notify Organization of the suspension, restriction or limitation to Organization's access to the Software Services unless Harris believes that an immediate suspension is required and will restore Organization's access to the Service after Harris has had reasonable assurance that such conduct has been permanently discontinued. In addition to and without limiting the foregoing, Harris reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Organization or any customer of Organization in connection with its use of the Software Services that Harris determines, in its

reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Harris or its service provider's network, business or other customers. In the event that Harris suspends Organization's right to access or use all or any portion of the Software Services, Organization remains responsible for all Fees incurred during the period of suspension and will not be entitled to any service credits (under Schedule "D" to this Agreement or otherwise) for any period of suspension.

ARTICLE IV: SUPPORT FOR SOFTWARE SERVICES

Section 4.1 Delivery of Support for Software 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" or any relevant SOW, effective on the date support services fees are due, as detailed in the SOW.
- 4.1.2 Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the Support Services and Software Services shall at all times remain with Harris, and Organization shall acquire no proprietary rights thereto.

ARTICLE V: REPRESENTATIONS AND WARRANTIES

Section 5.1 Warranty of Performance

- 5.1.1 Software Services Warranty. During the Term Harris warrants to Organization that the Software Services will perform substantially in accordance with the published user guides for the Software Services posted by its hosting provider, as such user guides may be updated by said provider from time to time. Harris and its service providers' sole obligation and Organization's sole remedy in the event the Software Services do not conform to the foregoing limited warranty is for Harris to use commercially reasonable efforts to correct such non-conformance and the right to terminate this Agreement in accordance with Section 8.2.1 of this Agreement.
- 5.1.2 In the event an error is discovered in the Software and the error can be reproduced by Harris, 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 During the Term Harris warrants that Professional Services will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Section 5.2 No Other Warranties

TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET OUT IN SECTION 5.1, THE SERVICES, THE SOFTWARE, THE SUBLICENSSED SOFTWARE, THE PROFESSIONAL SERVICES, THE SUPPORT SERVICES AND ANY OTHER PRODUCTS, MATERIALS AND SERVICES ARE PROVIDED TO THE ORGANIZATION AND ITS USERS AND CUSTOMERS "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 SERVICE PROVIDERS, LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, SUBLICENSSED SOFTWARE, THE SERVICES, THE PROFESSIONAL SERVICES, AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

HARRIS DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE OR SUBLICENSSED SOFTWARE, SHALL OPERATE ERROR FREE OR IN THE COMBINATIONS SELECTED, THAT IT SHALL MEET ANY OR ALL OF THE ORGANIZATION'S OR ITS CUSTOMER'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN THE SOFTWARE OR SUBLICENSSED SOFTWARE CAN BE FOUND OR CORRECTED. HARRIS AND ITS SERVICE PROVIDERS AND LICENSORS DO NOT REPRESENT OR WARRANT THAT THE SERVICES SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF ORGANIZATION'S OR ITS CUSTOMERS' PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, HARRIS AND ITS SERVICE PROVIDERS AND LICENSORS DO 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, THIRD PARTY TELECOMMUNICATIONS PROVIDERS, 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.

ARTICLE VI: FEES AND PAYMENT

Section 6.1 Fees and Payments for Services and SaaS Licenses

- 6.1.1 The Organization agrees to pay to Harris the Fees. The fee structure and payment schedule for Professional Services are outlined in Schedule "A". All payments for Professional Services are non-refundable.
- 6.1.2 Annual SaaS for SaaS Licenses
 - 6.1.2.1 The Organization agrees to pay Harris the Annual SaaS Fees, which is not inclusive of any applicable taxes. The Organization shall be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule are outlined in Schedule "A". The License is subject to the full payment of the Annual SaaS Fees in accordance with the payment terms set out in Schedule "A".

- 6.1.2.2 The Annual SaaS Fees will be billed annually in advance beginning as set forth in Schedule "A" and thereafter on the anniversary or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Annual SaaS Fees to its fiscal year or any other period it may request, then Harris will issue a prorated invoice for the portion of the year remaining during the initial term. Harris may change the Annual SaaS Fees from time to time in relation to each renewal term, but Organization shall only be billed once per year.
- 6.1.3 The Organization agrees to reimburse Harris for its travel, lodging, per diem and other out of pocket expenses as set out Schedule "A". Unless otherwise specified in any SOW, and in addition to any Annual SaaS Fees, Organization shall reimburse Harris for its direct expenses in providing Support Services ("**Billable Fees**") pursuant to this Agreement which include:
- (i) its direct travel expenses which are excluded from the total fees amount described in the Statement of Work, including, but not limited to hotel, airfare, car rental, tolls, parking and airline and travel agent fees;
 - (ii) courier services, photocopying, faxing and reproduction, all reasonable travel costs (hotel and airfare) including a travel time rate of \$75.00 per hour;
 - (iii) a per diem rate of \$70.00 for weekdays and a \$140.00 for weekends and statutory holidays that includes all meal, food and telecommunications expenses (no receipts will be provided);
 - (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 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.
- 6.1.4 During the Term, Harris shall, from time to time, deliver invoices to Organization if authorized under this Agreement. Each invoice is due and payable upon receipt.
- 6.1.5 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.
- 6.1.6 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 "A" 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.
- 6.1.7 **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 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 Professional 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 "F".

- 6.1.8 Harris shall supply all Upgrades to Organization at no additional charge other than the payment of ongoing Annual SaaS Fees. 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.
- 6.1.9 All Updates of the Software and all those services listed in the Statement of Work which are included as part of the Support Services will be made available to Organization at no additional charge other than the payment of the Annual SaaS Fees.

Section 6.2 Piggyback Procurement

The Organization reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the Organization's state as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private educational institutions and not-for-profit agencies providing services on behalf of government, and/or state, community and/or private educational institutions. This is conditioned upon mutual agreement of all parties and the additional of any special requirements, which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this proposal and will provide usage information, which may be requested. A copy of the contract pricing and the proposal requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own Agreement with Harris, and this Agreement shall be binding only upon the principals signing such an Agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any Agreement shall be the responsibility of the participating jurisdiction or agency that entered into that Agreement. Disputes must be resolved solely between the participating agency and Harris.

ARTICLE VII: REMEDIES, LIABILITY AND INDEMNITY

Section 7.1 Remedies and Liability

- 7.1.1 Except as otherwise provided in this Agreement, 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 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' and its service providers'

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) TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR DAMAGES ARISING OUT OF HARRIS' INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.3, AND CLAIMS ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF HARRIS, BOTH PARTIES AGREE THAT HARRIS' AND ITS SERVICE PROVIDERS' 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 ANNUAL SAAS 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 AND ITS SERVICE PROVIDERS 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, LOST OR DAMAGED 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.
- (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, WHETHER IN CONTRACT OR IN TORT, INCLUDING, BUT NOT LIMITED TO, FUNDAMENTAL BREACH, RESCISSION OF CONTRACT, OR NEGLIGENCE.

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 of that third party 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 acting on behalf of and at the direction of the Organization in any manner whatsoever except with the prior written consent of Harris;
- (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use;
- (iii) use of the Software other than in compliance with this Agreement;

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 7.3 shall not apply to Third Party Components 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 Components.

Section 7.4 Organization Indemnification.

7.4.1 Organization is solely responsible for its Data, its use, and its Users' and its customers' use, of the Services in any way, and all legal liability arising out of or relating thereto. Organization shall defend, indemnify and hold Harris and its third party service providers, and each of their respective affiliates, officers, directors, employees and agents (the "**Indemnities**") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with (i) the use of the Services including but not limited to any Third Party Components by Organization, its customers, or its Users; (ii) any breach by Organization, or its Users of this Agreement; and (iii) Data and Professional Services Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or Data and/or Professional Services Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

ARTICLE VIII: GENERAL

Section 8.1 Confidentiality

8.1.1 The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, service providers, employees or representatives who have a need to know such information (“**Representatives**”), for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who are bound by non-disclosure obligations at least as protective of the other party’s Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party’s Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, Organization must promptly notify Harris. A party may disclose the other’s Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Section 8.2 Termination

- 8.2.1 If either party is in material breach of any of 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, of the date of 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 ninety (90) days following receipt of the Default Notice, this will constitute an “Event of Default” and the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- 8.2.2 If Organization has failed to pay any amounts when due under this Agreement, Harris shall have the right to (A) suspend performance of the Services (including Organization and its Users’ access to the Services) until all amounts are paid in full; and/or (B) terminate this Agreement or any part thereof effective immediately upon written notice to Organization to that effect.
- 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.
- 8.2.4 Harris may terminate this Agreement effective immediately upon written notice to Organization if Organization has breached its obligations of confidentiality or any intellectual property right or proprietary right of Harris or its service providers.
- 8.2.5 If any such modification, change or replacement of the original Third Party Components pursuant to Section 2.6 impairs Organization's ability to utilize such Software Services in substantially the same manner as they were utilized prior to the modification, change or replacement, Organization may terminate this Agreement by providing written notice to Harris within twenty (20) days after Organization's discovery of such impairment. If any modification to the terms and conditions of this Agreement made by Harris pursuant to Section 2.6 due to a change in the terms of its agreement with a provider of the Third Party Components are material in nature, then Organization shall have the right to terminate this Agreement upon written notice to Harris given within fourteen (14) days of the date of notice from Harris of such modified terms.

Section 8.3 Procedure on Termination

- 8.3.2 In the event of termination or expiration of this Agreement:
 - (a) All rights granted to Organization in this Agreement shall immediately terminate and Harris will immediately cease to perform or provide the Software Services.
 - (b) Organization will pay all amounts due under this Agreement up to and through the date of termination and all costs reasonably incurred in collecting the amounts due to Harris (including court costs, attorney fees, and repossession charges to the extent not prohibited by law).
 - (c) Conditional upon Organization's payment of all Fees that are due to Harris and unless prohibited by law or the order of a governmental or regulatory body or it could subject Harris and/or its third-party service provider or their affiliates to liability, Harris will furnish the Harris with a copy of the Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated time to provide a copy of the Data are one to two days and will be billed at Harris's then current daily rate. Upon receipt of notice from Harris confirming receipt of the Data, Harris shall destroy all copies of the Data and delete all Data on the database and an Officer of Harris shall certify the destruction and deletion to the Organization. Subject to any legal requirement that Harris must retain a copy of the Data, Harris shall not delete the Data for 90 days from the date of termination except: (i) where Harris has provided the Data to Harris pursuant to this Subsection; or (ii) where it has received written instructions from Organization to delete the Data. Following 90 days from the date of termination if Organization has not communicated with Harris regarding the Data, Harris shall have the right to delete all Data at any time as either required by law or as determined by Harris in its sole discretion. Notwithstanding the foregoing, Harris shall be permitted to delete all Data without providing notification to Organization and Harris shall not be required to adhere to the time frames detailed above where Harris is required by law to delete such Data. Harris and its service providers have no liability for the deletion of Data, and Personal Information as described in this section.
 - (d) Organization shall return to Harris or at Harris' option purge or destroy all copies of any Confidential Information of Harris or the third party service provider in its possession or under its control (except as required under any statute or legislation related to retention

requirements), and provide a duly authorized certificate of an officer of Organization confirming same within thirty (30) days.

- (e) Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.

Section 8.4 Mediation

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

Section 8.5 Addresses for Notice

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

N. HARRIS COMPUTER CORPORATION
Address: 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4
Attention: Blair Robinson, Portfolio Leader
Phone: 289-207-2993
Email: brobinson@harriscomputer.com

and in the case of the Organization, to: City of Corona
Address: 400 S. Vicentia Avenue, Corona CA 92882
Attention: Amy Betancourt, Customer Care Supervisor
Phone: 951-279-3589
Email: Amy.Betancourt@CoronaCA.Gov

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 Annual SaaS Fees, Professional Services Fees, and other 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, additional fees based on the then prevailing Annual SaaS Fees 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 right to use the same software and the same services as the Software, Sublicensed Software if applicable, and Software Services being provided to Organization under this Agreement. Additional fees may apply to any third party products and services that are subject to additional fees that are not included in the Annual SaaS Fees, as indicated in a SOW or Schedule to this Agreement.

Section 8.8 Entire Agreement

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

Section 8.9 Section Headings

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

Section 8.10 Governing Law

This Agreement together with the Schedules attached to this Agreement and all documents referenced therein which are incorporated herein by reference shall be governed by the laws of the State of California;

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. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) and any legislation implementing such Convention, if otherwise applicable.

Section 8.11 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 8.12 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 8.13 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 8.14 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 Trade Compliance

Organization is solely responsible for compliance with applicable laws related to the manner in which Organization chooses to use the Software Services, including (i) Organization's transfer and processing of Data, and (ii) the provision of Data to Users. Organization represents that Organization and the entities that own or control Organization, and the financial institutions used to pay Harris under this Agreement, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority

Section 8.18 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, ON 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, pandemics, war, terrorist acts, embargoes, severe weather, fire,

earthquakes, acts of God or the public enemy or default of a common carrier, unavailability of Third party Components, or other disasters or events.

Section 8.22 Survival

The following sections and articles shall survive the termination or expiration of this Agreement: Article 1, Sections 2.1.2, 2.3, 2.4, 2.5, 2.6, 3.2, 3.3.3, 3.4, 3.5, 3.6, 5.2, Article VI, Article VII, Article VIII, and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.

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

CITY OF CORONA

By: _____
Tom Moody
Director of Utilities

Date: _____

N. HARRIS COMPUTER CORPORATION

DocuSigned by:
By: Blair Robinson
Blair Robinson
Portfolio Leader

Date: 12/28/2023

Reviewed By: Katie Hockett
Katie Hockett
Assistant Director of Utilities

Date: 1/11/2024

Reviewed By: Yasmin Lopez
Yasmin Lopez
Purchasing Manager

Date: 1/2/2024

APPROVED AS TO FORM:

Dean Derleth
City Attorney

Date: _____

ATTEST:

Sylvia Edwards, City Clerk
City of Corona, California

Date: _____

Schedule "A" - Description of Software Fees & Payment Schedule

Software	License Type	Quantity	Maximum Meters	Maximum Accounts
Infinity CIS (Customer Information System)	Annual SaaS - Users	40 of Concurrent Users (35 Existing + 5 in Upgrade SOW)	51,500	50,271

The Annual SaaS Fees are based on the number of accounts, set out in the table below:

Service	Number of Accounts
Water	48,500
Sewer	43,000
Solid Waste	36,500
Electric	3,000
Stormwater	0

Data Storage Limit: 1024 GB (data held in the database)

Any additional data stored will be charged at \$5.52/32GB per month and will be invoiced monthly and due upon receipt.

Data Export Limit: 100 GB per month (data exported from the Cloud Platform)

Any additional data exported will be charged at \$0.20/GB per month or the then current rate and will be invoiced monthly and due upon receipt.

Document Storage Limit: 250 GB (binary files or documents stored in the application)

The organization has up to 250 GB of Document Storage Limit per month available. Any additional artifact storage will be charged at \$0.03/GB per month or the then current rate and will be invoiced monthly and due upon receipt.

Additional CIS Infinity Concurrent SaaS licenses will be \$7,875 per concurrent user per year or the then current rate.

PAYMENT TERMS:

All ongoing Annual SaaS Fees subject to a 5% annual escalation or CPI, whichever is greater.

Professional Services Fees stated above will be invoiced 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. Lapsed payments may lead to denial of access to the Service. Delayed payments are subject to an interest charge at a rate per annum that is equal to the prime lending rate set by the Bank of Canada plus 2.5% compounded monthly (or the prime lending rate set by the Federal Reserve plus 2.5% compounded monthly in the case that Organization is located in the United States), or the highest amount permitted by applicable law, whichever is lower.

ADDITIONAL PROFESSIONAL SERVICE(S) FEES:

Additional Professional Services may be provided on-site or via the telephone. 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.

Customer shall incur a seven-hundred fifty dollar (\$750) daily surcharge for any Professional Services provided on weekends or Harris 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.

Summary of total fees due and owing:

The Existing Maintenance & Support Fees outlined below are due on or before January 1, 2024 and are part of the CIS v3 agreement. Additional Maintenance & Support will be due upon the milestones listed in Schedule B. Once CIS v5 is live, the existing CIS v3 Maintenance & Support fees will migrate and be included in the CIS SaaS Fees and will be billed annually on or before the first of the year.

Existing Maintenance & Support Fees (not including fees itemized in Schedule B)	
2024 Maintenance & Support	\$ 153,317.60

The following fees are to be paid upon the milestones listed in Schedule B.

Summary of Additional Fees Stated in Schedule B (Schedule B: Corona – Advanced CIS v5 Upgrade SOW)	
Professional Services	\$ 351,350.00
Licenses	\$ 24,375.00
Additional Annual Maintenance Total (comprised of the following) - Infinity v5 Platform - Infinity Cloud - Additional CIS Licenses	\$ 99,191.00

Once CIS v5 goes live, the Annual Maintenance Fee will be replaced by the Annual SaaS fee estimated to be comprised of the following:

Consolidated Summary of 2025 SaaS Fees	
2025 CIS SaaS	\$ 173,078.25
2025 Link Maintenance & Support	\$ 10,768.98
2025 CIS Infinity Cloud	\$ 81,286.80
Total	\$ 265,134.03

Schedule “B” – Statement of Work

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

Schedule “C” - Third Party Components Terms and Conditions

1. Microsoft Azure

Organization agrees that the additional terms set out in Microsoft’s Universal License Terms, available at <https://www.microsoft.com/en-us/licensing/product-licensing/products> (the “**Universal License Terms**”), apply to Organization’s use of the Services and the Microsoft Products and Services Data Protection Addendum (“**DPA**”) available at <https://aka.ms/DPA> sets out the parties obligations with respect to processing and security of Data and Personal Information in connection with Organization’s use of the Services and to the processing and security of Professional Services Data and Personal Information in connection with the provision of any professional services and support services performed by Microsoft related to the Services. For clarity, the DPA applies only to the processing of data in environments controlled by Microsoft and its subprocessors, including data sent to Microsoft by the Microsoft products and the Services but does not include data that remains on Organization’s premises or in any Organization selected third party operating environments. The Universal License Terms and the DPA may be changed from time to time. Organization should review such documents carefully, both at time of acceptance of this Agreement and periodically thereafter, and fully understand all terms and conditions applicable to the Services.

Information regarding Microsoft Azure’s data residency and transfer policies is available at the following link: www.microsoft.com/en-us/trustcenter/privacy/where-your-data-is-located.

An overview of how encryption is used in Microsoft Azure (for data at rest and data in transit) is available at the following link: <https://docs.microsoft.com/en-us/azure/security/security-azure-encryption-overview>.

High Risk Use: *Organization must consider whether its specific use of these technologies is safe. The Services are not designed or intended to support any use in which a service interruption, defect, error, or other failure of the Service could result in the death or serious bodily injury of any person or in physical or environmental damage (collectively, “**High-Risk Use**”). Organization’s High-Risk Use of the Services is at its own risk. Organization agrees to defend, indemnify and hold Harris and Microsoft harmless from and against all damages, costs and attorneys’ fees in connection with any claims arising from a High-Risk Use associated with the Services, including any claims based in strict liability or that Harris and/or Microsoft was negligent in designing or providing the Service(s) to Organization.*

The foregoing information, including the links to such information, may be changed from time to time therefore Organization is responsible for reviewing such information periodically.

Schedule “D” - Service Availability and Support Services

PART 1: DEFINITIONS

For purposes of this Schedule “D” (“SLA”), the following terms have the meanings set forth below. All capitalized terms in this SLA that are not defined in this Part 1 shall have the respective meanings given to them in the Main Body.

- 1.1 **"Availability Requirement"** has the meaning given to it by Part 2 of this SLA.
- 1.2 **"Business Day(s)"** has the meaning given to it by applicable law.
- 1.3 **"Customer Cause"** means any of the following causes of an Error,: (a) any negligent or improper use, misapplication, misuse or abuse of, or damage to, the Harris Systems by Organization or its Representatives; (b) any maintenance, update, improvement or other modification to or alteration of the Harris Cloud Services or the Harris Systems by Organization or its Representatives; (c) any use of the Harris Cloud Services or the Harris Systems by Organization or its Representatives in a manner inconsistent with the then-current Documentation; (d) any use by Organization or its Representatives of any products or services that Harris has not provided or caused to be provided to Organization; (e) delay or failure of performance by Organization of its obligations under this Agreement; or (f) any use by Organization of a non-current version or release of the Harris Cloud Services, notwithstanding notice from Harris that updates, fixes or patches are required; (g) or any act or omission by Organization or any Authorized User/access to or use of the Harris Cloud Services by Organization or any Authorized User, or using Organization's or an Authorized User's access credentials, that does not strictly comply with this Agreement and the Documentation. For clarity, if any of the foregoing is authorized by Harris in writing, it will not be considered a “Customer Cause”.
- 1.4 **"Designated Representative"** has the meaning set forth in Part 3 (d).
- 1.5 **"Error"** means any reproducible failure of the Harris Cloud Services to operate in all material respects in accordance with the Documentation, including any problem, failure or error referred to in the Service Level Table.
- 1.6 **"Exceptions"** has the meaning given to it by Section 2.
- 1.7 **"First Line Support"** means (i) the identification, diagnosis and correction of Errors by Harris help desk technicians by telephone or e-mail communications with a Designated Representative following submission of a Support Request; and/or (ii) referral to technical information on the Harris Site for proper use of the Harris Cloud Services.
- 1.8 **"Force Majeure Event"** means an event of “Force Majeure”, as that term is defined by Section 17.9 of the Main Body.
- 1.9 **"Main Body"** means the main body of the Master Subscription Agreement between the parties dated the Effective Date.
- 1.10 **"Out-of-Scope Services"** means any of the following: (a) any of the services set forth in any exhibit attached to this SLA at the time of execution, and any other services that Organization and Harris may from time to time agree in writing are not included in the Support Services; (b) any services requested by Organization and performed by Harris in connection with any apparent Services Error that Harris has reasonably determined to have been caused by a Customer Cause;

and (c) any Second Line Support requested by Organization and provided by an individual requested by Organization whose qualification or experience is greater than that reasonably necessary to resolve the relevant Support Request.

- 1.11 **"Remote Access Software"** has the meaning set forth in Part 3.
- 1.12 **"Remote Services"** has the meaning set forth in Part 3.
- 1.13 **"Resolve"** and the correlative terms, **"Resolved"**, **"Resolving"** and **"Resolution"** each have the meaning set forth in Part 3.
- 1.14 **"Second Line Support"** means, where Errors are not Resolved by First Line Support, the escalation to second line support for the identification, diagnosis and correction of Errors through a Designated Representative by telephone or e-mail or through Remote Services or otherwise, as the parties may agree.
- 1.15 **"Service Level Failure"** has the meaning given to it in Part 2.
- 1.16 **"Service Level Table"** means the table set out in Part 3.
- 1.17 **"Service Period"** has the meaning given to it in Part 2.
- 1.18 **"Severity 1"** has the meaning set forth in Part 3.
- 1.19 **"Severity 2"** has the meaning set forth in Part 3.
- 1.20 **"Severity 3"** has the meaning set forth in Part 3.
- 1.21 **"Support Hours"** means those hours between 8:00 AM and 9:00 PM Eastern Time on Business Days.
- 1.22 **"Support Request"** has the meaning given to it in Part 3.
- 1.23 **"Support Services"** means Harris's First Line Support and Second Line Support, but excludes the support of: (i) Implementation Services; (ii) Professional Services; and/or (iii) Out-of-Scope Services.
- 1.24 **"Support Service Levels"** means the defined severity levels and corresponding required service level responses, response times, and Resolutions referred to in the Support Service Level definitions.
- 1.25 **"Third-Party Components"** has the meaning given to it by Section 1.1 of the Main Agreement.

PART 2: AVAILABILITY REQUIREMENT

Subject to the terms and conditions of this Agreement, Harris will use commercially reasonable efforts to make the Services Available at least ninety-nine and one-half percent (99.5%) of the time in any given calendar month during the Term (each such calendar month, a "Service Period"), excluding un-Availability as a result of any of the Exceptions described below in this Part 2 (the "Availability Requirement"). "Service Level Failure" means a material failure of the Services to meet the Availability Requirement. "Available" means the SAAS delivered pursuant to a particular Services Order are available for access and use by Organization and its Authorized Users in a production environment. For the purposes of calculating the Availability Requirement, the following are "Exceptions" to the Availability Requirement, and neither the Services or the Software will be considered un-Available, nor any Service Level Failure be deemed to occur, in connection with any failure to meet the Availability Requirement or impaired ability of Organization or its Users to access or use the Services that is due, in whole or in part, to any:

- (a) Organization Cause;

- (b) Organization's or its User's Internet connectivity;
- (c) Force Majeure Event;
- (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Harris pursuant to this Agreement;
- (e) Scheduled Downtime (defined below);
- (f) any interruption to the access or use of the Services that occurs in a non-production environment;
- (g) emergencies in the nature of security risks and updates to address such security risks;
- (g) the failure, interruption, outage, or other problem with a Third-Party Component; or
- (i) disabling, suspension, or termination of the Services for cause by Harris.

Availability Calculations:

Availability is calculated as follows:

Description	Calculation of Availability	Service Period
Percentage of time the SaaS is Available.	<p>Availability</p> $= \frac{a - b - c}{a - b} \times 100$ <p>Where: a = Total minutes in the month b = Total minutes of planned maintenance in the month c = Total minutes of unplanned service outages in the month</p>	Each Calendar Month

Service Level Failures and Remedies:

In the event of a Service Level Failure, Harris shall issue a credit to Organization in the amounts set out in the table below (a "**Service Level Credit(s)**"), provided however, that Harris has no obligation to issue any Service Level Credit unless Organization: (i) reports the Service Level Failure to Harris immediately on becoming aware of it; and (ii) requests such Service Level Credit in writing within ten (10) days of the Service Level Failure.

Service Period Availability (as calculated in the table above)	Service Level Credit (Percentage of Monthly Payment of Annual Subscription Fees)
Equal to or greater than 99.5%	0%
Equal to or greater than 98.5%	2%
Equal to or greater than 97.5%	6%
Less than 97.5%	12%

Service Level Credits are not compounding and shall be limited to a maximum of twelve percent (12%) of the pro-rated portion of the Annual Subscription Fees paid by Organization for the Services applicable to the calendar month in which the Service Level Failure occurred (and in no event shall the total Service Level Credits due to Organization in any twelve (12) month period exceed 12% of the Annual Subscription Fees). Any Service Level Credit due to Organization under this Schedule "D" will be issued to Organization and applied at the time of invoicing for the next applicable invoice date.

This Schedule "D" sets forth Harris' obligation and liability and Organization's sole remedy for any Service Level Failure.

(c) Scheduled Downtime

Harris will use commercially reasonable efforts to:

- (i) Schedule downtime for routine maintenance of the Services between the hours of 7:00 p.m. and 6:00 a.m. Pacific Time on Business Days or anytime during Non-Business Days for the production environment; and
- (ii) Give Organization at least 48 hours prior notice of all scheduled downtime of the Services ("**Scheduled Downtime**") for production and non-production environments under non-emergency/high-criticality situations.

PART 3: SUPPORT SERVICES

Harris shall provide the First Line Support and the Second Line Support during the Support Hours throughout the Service Period in accordance with the terms and conditions of this SLA and the Main Body, including the Service Levels.

1.0 Support Services included

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
- Online ticket access 24 x 7 with the following 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
- Account Management Program
 - Regular calls with Customer Success Manager/Account Manager
 - Communication on new products and services
- Ability to attend the annual customer conference (attendance fees apply)

2.0 Support Service Levels

(a) Response times and Resolution will be measured from the time Harris receives a Support Request until the respective times Harris has: (i) responded to that Support Request, in the case of response time; and (ii) Resolved that Support Request. "Resolve", "Resolved", "Resolution" and correlative capitalized terms mean, with respect to any particular Support Request, that Harris has corrected the Error that prompted that Support Request. Harris shall respond to and Resolve Support Requests as set out below based on Organization's designation of the severity of the associated Error, subject to Harris' right to revise such designation after Harris' investigation of the reported Error and consultation with Organization;

(b) Harris shall Resolve the Support Request within a commercially reasonable period of time following the diagnosis of the Error. In the case of Errors designated by Organization as Severity

Levels 1 or 2 (High or Medium, respectively), if Harris Resolves the Support Request by way of acceptable work-around, the Error will be reduced to a Severity Level of 3.

3.0 Response Times

Response times will vary and are dependent on the severity 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:

- (a) Severity 1 – Critical/High: 1 - 4 hours
- (b) Severity 2 – Medium: 1 - 8 hours
- (c) Severity 3 – Low: 1 - 24 hours

4.0 Call Severities

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

- (a) Severity 1 – High
 - System Down (users have no access to Advanced production environment)
 - Inability to process bills/invoices
 - Program errors without workarounds impacting critical processes
 - Aborted postings or error messages preventing data integration and update
 - Performance issues of severe nature impacting critical processes
 - Data Security issues
 - Issues causing critical integrations to completely fail

Note: the existence of a mutually agreed upon work-around precludes a Severity 1 or Severity 2 issue in most cases.

- (b) Severity 2 – Medium
 - System errors without manageable workarounds
 - Report calculation issues
 - Error messages preventing data integration and update
 - Issues causing non-critical integrations to fail completely
 - Performance issues of severe nature not impacting critical processes
- (c) Severity 3 – Low
 - System errors that have manageable workarounds
 - Performance issues not affecting critical processes
 - Modification requests relating to efficiency or other usability considerations
 - Report formatting issues
 - Training questions, how to, or implementing new processes
 - Aesthetic issues
 - Requests/recommendations for enhancements on system changes
 - Questions on documentation

5.0 Designated Representative

Organization shall designate the individual(s) who will act as a direct liaison with Harris and be responsible for communicating with, and providing timely and accurate information and feedback to Harris in connection with the Support Services (each such individual, a "Designated Representative"). The Designated Representative(s) will be the sole liaison(s) between Organization and Harris in sending Support Requests and communicating with Harris in connection with any matters relating to the provision of the Support Services.

6.0 Support Requests

If, after reviewing support resources, Organization has not corrected an Error, Organization may request Support Services by way of a Support Request. Organization shall classify its requests for Error corrections in accordance with the severity level numbers and definitions within the service level definitions set forth above and shall submit its request through the Harris support portal located on the Harris Site, or such other means as the parties may agree to in writing (each a "Support Request"). Organization shall include in each Support Request a description of the reported Error and the time Organization first observed the Error. The Service Level Table will not apply to support requests that do not follow the process set out in this section and Harris will not, in those circumstances, be required to meet the Service Levels.

7.0 Call Process

All Errors or questions reported to Harris are tracked via a support call ticket; Our current process for logging calls includes the following: TeamSupport (via website), email, and phone.

- (a) Your call must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description, including screenshots of steps, of your question or issue, a trace (xtrace) of the behaviour, and any other information you believe pertinent.
- (b) Our support system or one of our support analysts will provide you with a ticket number to track your issue and your call will be logged into our support tracking database.
- (c) Your call will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- (d) As the support representative assigned to your call 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.
- (e) All correspondence and actions associated with your call will be tracked against your call in our support database. At any time, if available to you, you may log onto our website to see the status of your call.
- (f) Once your call has been resolved, you will receive an automated notification by email that your call has been closed. This email will contain the entire event history of the call from the time the call was created and leading up to the resolution of the call. You also have the option of viewing both your open and closed calls, if available to you, via our website.
- (g) If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be logged into our development tracking database. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue.
- (h) Contact the support department at your convenience for a status update on your development issues, or log onto our website (if available to you) to view your issues on-line.

(i) Automated closing of issues: The Organization will be consulted before closing a support issue whenever possible. However, if a ticket is in a customer-action status (ex: “ Client To Test”) it may be closed after four weeks of inaction after reasonable attempt by Support to obtain an update. A closed ticket may be re-opened at any time.

8.0 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 support team lead or manager
- Level 3: Contact the director or vice president of support
- Level 4: Contact the executive vice president

9.0 Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below. Staff will be available via the after-hours support phone to deal with critical incidents.

New Year’s Eve:	Early Closure
New Year's Day:	Closed
Good Friday:	Closed
Victoria Day:	Closed
Canada Day:	Closed
Civic Holiday:	Closed
Labor Day:	Closed
Thanksgiving:	Closed
Christmas Eve:	Early Closure
Christmas Day:	Closed
Boxing Day:	Closed

10.0 Billable Support Services

The services listed below are examples of services that are out of scope of the Service Level Agreement and are therefore considered billable services:

- Extended training
- Forms redesign or creation (includes bill prints, notices, letters, forms, etc.)
- Setup and changes to interfaces or creation of new interfaces
- Setup of new utility services or changes to services / Rates
- Request to add/change business process configuration for new or changing requirements
- Setup of new receipt printers, printer setup changes
- Data conversions / global modification to setup table data

11.0 Test Databases & Environments

We support customers in the maintenance of independent test environments 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 live environment. The creation of additional

test databases and application instances is a billable service, quotations and incremental maintenance rates will be provided on request.

12.0 Updates

Within a reasonable time of Error diagnosis, Harris may give Organization electronic updates of the nature and status of its efforts to correct an Error, including, if possible, a description of the Error and estimated time to reach Resolution.

13.0 Remote Support Services

(a) Harris may provide Support Services to Organization remotely, including by means of telephone or internet telephony, or over the internet through the use of Remote Access Software ("Remote Support Services") to assist in maintaining the systems and analyzing and Resolving any Error reported by a Support Request during the Support Period. Organization shall give Harris permission to use remote access software necessary for Harris to provide the Remote Support Services to Organization ("Remote Access Software"). The Remote Access Software contains technological measures designed to collect and transmit to Harris certain diagnostic, technical, usage and related information relating to or derived from Organization's use of the Advanced Cloud Services and Third-Party Products. The parties acknowledge and agree that Harris and its agents, Affiliates or subcontractors may collect, maintain, process and use: (i) only such information as is necessary to assist in analyzing and Resolving a Support Request; and (ii) use such information solely to provide the Support Services in accordance with the terms and conditions of this SLA and the Main Body ;

(b) To ensure we can effectively support our clients, we require that a communication link is established and maintained between our two sites. It is the Organization's responsibility to ensure the connection is valid at your location so that we can connect to your site and resolve any issues. Our supported methods of connection are: Direct internet, Virtual Private Network (VPN), Remote Access Server (RAS), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers. Organization utilizes a secure remote tool called BeyondTrust Remote Support ("Bomgar"). Harris agrees to use Bomgar as the preferred remote connectivity option. Harris will have the ability to control and access the environment 24/7 when using the secure remote tool. Organization will utilize Azure Storage or similar as dictated by Harris to transfer files and Data. Harris will be able to have a minimum of 6 concurrent connections for the implementation that are in addition to any used by support.

(c) Harris shall treat any information it collects, maintains, processes or uses under this Section 13 as Organization's Confidential Information.

14.0 Out-of-Scope Services

Organization may request Out-of-Scope Services through a Change Order, in accordance with the terms and conditions of this SLA and the Main Body.

Schedule “E” – Third Party Terms

EBPP

The EBPP software product that may be available as part of the Customer Engagement Portal is Third Party Software that is licensed to Organization by the applicable third party software licensor and is subject to the terms and conditions of the direct agreement entered into between Organization and such third party software licensor.

Schedule "F" – Sample Change Order Form

[CLIENT]

CIS Infinity 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:

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
Cite SOW reference	New scope/language	Explanation/justification	
NET CHANGE			

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%	\$XXX
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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)
Cite changes from above		
Total		

* Net of applicable taxes and associated expenses

Schedule "G" – Liability Insurance Endorsement

CHLJBBm **Liability Insurance**
Endorsement

<i>Policy Period</i>	SEPTEMBER 27, 2023 TO SEPTEMBER 27, 2024
<i>Effective Date</i>	SEPTEMBER 27, 2023
<i>Policy Number</i>	9950-48-39 EUC
<i>Insured</i>	CONSTELLATION SOFIWARE, INC.
<i>Name of Company</i>	FEDERAL INSURANCE COMPANY
<i>Date Issued</i>	SEPTEMBER 28, 2023

This Endorsement applies to the following forms:

GENERAL LIABILITY

Under Who Is An Insured, the following provision is added.

Who Is An Insured

*Additional Insured -
Scheduled Person
Or Organization*

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).
- with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

CHLJBBm

Liability Endorsement

(continued)

Under Conditions, the following provision is added to the condition titled Other furance.

Conditions

*Other Insurance -
Primary, Noncontributory
Insurance - Scheduled
Person Or Organization*

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

Persons or organizations that you are obligated, pursuant to a contract or agreement, to provide with such insurance as is afforded by this policy.

All other terms and conditions remain unchanged.

Authorized Representative



