

## **SOFTWARE LICENSE AGREEMENT**

**THIS SOFTWARE LICENSE AGREEMENT (the “Agreement”)** made as of the 25<sup>th</sup> day of September, 2018 (the “Effective Date”).

**BETWEEN:**

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

- and -

**LAKE HAVASU CITY, ARIZONA**  
 (“Organization”)

### **RECITALS**

1. Harris wishes to grant the Organization a license to utilize the Software as defined herein;
2. The Organization wishes to acquire a license to utilize the Software; and
3. The Organization and Harris agree to enter into three (3) separate agreements, each dealing with a separate aspect of the Software: this Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement. These three agreements may also be collectively referred to as the Master Agreement.

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

### **ARTICLE I. INTERPRETATION**

#### **Section 1.01 Definitions**

Throughout this Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) **“Active Account”** means each discrete billing unit or customer that requires a bill to be generated from the System. Active Account does not include each discrete billing unit or Customer that no longer receives a bill generated from the System but for historical data reporting purposes require account information to be maintained or manipulated through the System. Accounts with multiple services are considered to be a single account.

- (b) **“Agreement”** and similar expressions mean this Software License Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to “Articles” or “Sections” mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.
- (c) **“Completion of Services”** shall have the definition ascribed to it in the Software Implementation Services Agreement.
- (d) **“Concurrent Users”** means the total number of Users who can access the Software at any one time as detailed in Schedule “A,” and further described in Section 2.01(c).
- (e) **“Concurrent User License”** means a license that restricts the total number of Users who can access the Software at any one time to the number detailed in Schedule “A”.
- (f) **“Confidential Information”** means the Software and all information or material that either party treats as confidential which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary, or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be establish by evidence that would be acceptable to a court of competent jurisdiction.
- (g) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software.
- (h) **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regarding the Software regardless of the media on which it is provided.
- (i) **“License”** means the license rights granted to the Organization pursuant to Section 2.01(a) hereof and includes both a Concurrent User License and a Site License.
- (j) **“Release”** means an Update and an Upgrade.
- (k) **“Required Programs”** have the meaning set out in Section 3.04.
- (l) **“Site”** means solely at the production environment described in Schedule “A” and at an unlimited number of non-production environments.

- (m) **“Site License”** means a license that restricts the Software such that it can reside in one production environment and unlimited non production environments.
- (n) **“Software”** means the software products that are listed in Schedule “A” and includes any Update(s) or Upgrade(s) that have been provided to Organization. Third Party Software is not included in the definition of Software except where this Agreement explicitly states otherwise.
- (o) **“Third Party Software”** means the third party software product licensed to Organization by the applicable licensors as listed in Schedule “C”. 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 “C” shall be amended in accordance with Section 6.08 to add any such third party software and it shall be deemed “Third Party Software” for the purposes of this Agreement.
- (p) **“Update”** means any published changes, additions or corrections to the Software that primarily include a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes. An Update is designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2).
- (q) **“Upgrade”** means a major overhaul of the Software which is a complete new published version of the Software that modifies, revises or alters the Software and adds features, functionality or enhancements to such Software. An Upgrade is 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).
- (r) **“User”** means any employee of Organization or any of Organization’s agents who are authorized by Harris pursuant to the terms of this Agreement to have access to the Software.

## **Section 1.02 Currency**

Unless otherwise specified, all references to amounts of money in this Agreement and the related Schedules refer to U.S. currency.

## **Section 1.03 Schedules**

The Schedules described below and appended to this Agreement shall be deemed to be integral parts of this Agreement.

- Schedule “A” - Description of Software
- Schedule “B” - License Fees & Payment Schedule
- Schedule “C” - Third Party Software License and Third Party Software Terms

In the event of any conflict or inconsistency between the terms and conditions in the main body of this Agreement and the terms and conditions in any Schedule, 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.

## **ARTICLE II. SOFTWARE LICENSES**

### **Section 2.01 Grant of Licenses**

- (a) Subject to the terms and conditions of this Agreement including without limitation the payment of the License Fees, Harris hereby grants to the Organization a personal, non-exclusive, non-transferable and limited right and license to use the Software in object code format on the Designated Computer System at the Site and for the number of Concurrent Users specified in Schedule "A" (the "License"). All Releases installed by Organization are subject to this License. This License and the other terms and conditions related to this License do not apply to Third Party Software except as this License Agreement may state otherwise.
- (b) Any Software furnished by Harris in machine-readable form may be copied in whole or in part by Organization for use on the Designated Computer System, access to which by Users can be from any computer terminal, whether internal to or external to Organization's facility incorporating the Designated Computer System. To the extent that any temporary files associated with the Software are created during such use on terminals those temporary files are permitted under this License but only for such time that the temporary files are actually required. Organization agrees that the original copy of all Software furnished by Harris and all copies thereof made by Organization are and at all times remain the sole property of Harris.
- (c) Any License granted under this License Agreement permits the Organization to: (i) use the Software for its municipal and corporate purposes including, but not limited to, performing testing, disaster recovery, disaster testing, training, archival and backup as the Organization deems necessary, and (ii) use, copy and modify the Documentation for the purpose of creating and using training materials relating to the Software, which training materials may include flow diagrams, system operation schematics, and/or screen prints from operation of the Software. Access to and use of the Software by independent contractors of the Organization shall be considered authorized use under this Section so long as any such independent contractors are bound by obligations of confidentiality and have been approved by Harris in advance of the independent contractors' access to the Software; Harris reserves all rights in approving such access by independent contractors. The Organization shall be responsible for (i) all of the actions of and (ii) any misuse of the Software by any independent contractor.
- (d) The Organization may duplicate Documentation, at no additional charge; for the Organization's permitted uses so long as all required proprietary markings are retained on all duplicated copies.

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

The Organization may purchase additional licenses to use the Software at the time such licenses become necessary at Harris’s then current prices and terms.

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

## **Section 2.02 Term of License**

This Agreement commences on the Effective Date. The License is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof (the “Term”).

## **Section 2.03 Restrictions on Use**

- (a) Without limiting the generality of Section 2.01 and in addition the other restrictions listed therein, Organization shall not, and will not allow, direct or authorize (directly or indirectly) any third party to: (i) use the Software for any purpose other than in connection with Organization’s primary business or operations; (ii) disassemble, de-compile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create derivate works of the Software; (iv) rent, lease, lend, or use the Software for timesharing or bureau use or to publish or host the Software for others to use; or (v) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. Organization shall be wholly liable to Harris for any misuse of the Software and these restrictions are absolute except

as and only to the extent that this Agreement may expressly permit Organization to do otherwise.

- (b) The Software and related materials supplied by Harris are protected by copyright and trademark laws. The Software is licensed and may not be resold by Organization. Any rights not expressly granted herein are reserved. Organization may not obscure, remove or otherwise alter any copyright, trademark or other proprietary notices from the Software and related materials supplied by Harris.

#### **Section 2.04 Ownership of Software and Confidential Information**

- (a) The Organization acknowledges that the Software contains proprietary information and Confidential Information of Harris which shall, at all times, remain the property of Harris and, in addition to its obligations outlined in Section 2.03, the Organization agrees to treat such Confidential Information in accordance with Subsections (b) and (c) herein.
- (b) The Organization will take the same care to safeguard the Software as it takes to safeguard its own Confidential Information of a like nature and such care shall not be any less than would be taken by a reasonable person to safeguard its own confidential information.
- (c) In order to assist Harris with the protection of its proprietary information and Confidential Information and to enable Harris to ensure that the Organization is complying with its obligations, Organization shall permit Harris to visit during normal business hours any premises at which the Software is used or installed and shall provide Harris with access to its Software. Harris shall provide Organization with reasonable notice of any such audit.

#### **Section 2.05 Ownership and Disposition of Documents**

- (a) 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, shall continue to be the property of Harris.
- (b) 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 such other provisions as are typically found in an agreement of that nature, including without limitation, provisions regarding the ownership of such customer materials or documents.

#### **Section 2.06 Third Party Software**

- (a) Harris shall distribute to Organization the Third Party Software which is described as Third Party Software in Schedule "A". Organization shall pay Harris for the Third Party Software in the amount of the purchase price(s) listed on Schedule "B." Harris and/or the

Third Party Software manufacturer(s) will provide Organization with one copy of the then current user documentation for use with the Third Party Software.

- (b) It is acknowledged by the parties hereto that the Third Party Software provided by Harris to Organization pursuant to this Agreement was developed and delivered to Harris by one or more third party software companies. As such, the Third Party Software is licensed to Organization by the applicable licensor listed in Schedule "A" and subject to the terms and conditions of the applicable license agreement for such Third Party Software. Harris makes no warranties, express or implied, with respect to the Third Party Software, including, without limitation, their merchantability or fitness for a particular purpose and Harris accepts no liability of any kind whatsoever with respect to the Third Party Software. Any warranty Organization has with respect to the Third Party Software shall be solely provided by the Third Party Software licensor except where this Agreement expressly states otherwise.
- (c) Organization acknowledges that IBM's relevant standard licensing and use terms, as amended by IBM from time to time, apply to its use of Cognos and that Organization is bound by such licensing and use terms and such terms are included in Schedule "C". The standard licensing and use terms shall include anything described as a "Licensing Information Document" by IBM and all licensing files and NOTICE files that are included with the Cognos software or as may be supplied by IBM to Organization from time to time. To the extent that the terms in the Licensing Information Document or similar type documents provided by IBM differ from those in Schedule "C", the terms in the Licensing Information Document shall take precedence.
- (d) All such licenses are a restricted license, which means that the Cognos software may only be used with the Software.
- (e) Organization agrees that it shall not permit any third party to have access to the Third Party Software during the term of this Agreement and that the restrictions as set out in Section 2.03 and the confidentiality obligations set out in Section 6.01 shall equally apply to the Third Party Software, subject to any specific permissions that are provided in the license provided by the third party licensor to the Organization.

### **ARTICLE III. REPRESENTATIONS AND WARRANTIES**

#### **Section 3.01 Warranty of Performance**

Harris warrants to the Organization that:

- (a) the Software will substantially perform as described in the Documentation for a period of ninety (90) days from the Effective Date if the Software is used in accordance with the Documentation, the terms of this Agreement and where the Organization has the Required Programs and the hardware meets the requirements of Section 3.03 (b). The

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

- (b) In the event an error is discovered in the Software outside the warranty period and the error can be reproduced by Harris, provided Organization has entered into a valid Support and Maintenance Agreement with Harris, Harris will make reasonable commercial efforts to provide Organization with a correction or suitable workaround in accordance with the terms of such Support and Maintenance Agreement. Harris reserves the right to correct any defects about which it is made aware and to produce Releases at a time of Harris's own choosing and at Harris's discretion. .

### **Section 3.02 Exclusions to Warranty**

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

- (a) where the installation, integration, modification or enhancement of the Software has not been carried out by Harris or its authorized agent, or where Organization has taken any action which is expressly prohibited by the Documentation or this Agreement;
- (b) any use or combination of the Software with any software, equipment or services not supplied by or on behalf of Harris;
- (c) User error, or other use of the Software in a manner or in an operating environment for which it was not intended or other than as permitted in this Agreement;
- (d) Organization's failure to install a new Update which has been released to remedy an error or bug, and which Harris has stated to Organization is a required Update necessary for security purposes or for legislative compliance purposes or other reasons as Harris may determine is important in its sole discretion; or
- (e) Any other event of force majeure.

### **Section 3.03 No Other Warranties**

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

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE AND ANY OTHER PRODUCTS, SERVICES AND



MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

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

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

### **Section 3.04 Required Programs**

- (a) The Organization acknowledges that the use of the Software requires that the Organization obtain and install additional required software programs (the "**Required Programs**"), as detailed in the attached Schedule "A". The Organization agrees that the acquisition of the Required Programs shall be at its sole cost and that the cost thereof is not included in the fees herein, including for any future updates about which Organization is provided with commercially reasonable advance notice.
- (b) Organization's hardware must also be of sufficient quality, condition and repair, and the Organization agrees to maintain its hardware in the appropriate quality, condition and repair at its sole cost and expense, in order to facilitate the achievement of the proper installation and implementation of the Software in accordance with the Software Implementation Services Agreement. If Harris determines that Organization's hardware is not of sufficient quality, condition and repair, Harris shall notify Organization in writing of the Hardware deficiencies. Organization will use reasonable efforts to remedy any hardware deficiencies within 30 days of notification.
- (c) Organization shall provide no less than 180 days' notice where the Organization anticipates changing any of the third party software or hardware products in use on the Designated Computer System so that Harris may assess whether the Software will function with the different software or hardware. Where Harris determines that the Software may not function with the alternative software or hardware then any upgrade by Organization to the software or hardware will be at Organization's sole risk. Harris and Organization may be required to enter into a Statement of Work document subject to additional fees in order to make this determination.

## **ARTICLE IV. FEES AND PAYMENTS**

### **Section 4.01 Fees and Payments**

- (a) The Organization agrees to pay Harris total license fees detailed in Schedule "B" (the "License Fees"), which is not inclusive of any applicable taxes. The Organization shall

be responsible for the payment of any applicable duties and sales/consumption taxes. The fee structure and payment schedule is outlined in the attached Schedule "B". The License is subject to the full payment of the license fees.

- (b) Except for any aspect of the License Fee which is payable on the Effective Date, during the term of this Agreement Organization shall have thirty (30) days after the date outlined in the payment schedule in Schedule "B" to pay Harris the applicable License Fee.

## **ARTICLE V. REMEDIES, LIABILITY AND INDEMNITY**

### **Section 5.01 Remedies and Liability**

- (a) 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.
- (b) 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's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
  - (i) EXCEPT FOR DAMAGES ARISING OUT OF (a) HARRIS'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (b) HARRIS'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (c) HARRIS'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5.03, BOTH PARTIES AGREE THAT HARRIS'S 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 THE LICENSE FEES PAID TO HARRIS BY THE ORGANIZATION UNDER THIS AGREEMENT LESS A USAGE CHARGE BASED ON AN AMORTIZATION PERIOD OF FIVE YEARS.
  - (ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS

OR DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

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

#### **Section 5.02 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 5.03 Intellectual Property Indemnity**

- (a) 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, trade-mark or trade secret or other intellectual property that is valid and enforceable in Organization's jurisdiction, Harris shall, at its expense, defend and indemnify Organization and pay any final judgment (including all damages awarded against Organization) against Organization or settlement agreed to by Harris on Organization's behalf. This indemnity is only effective where (i) Organization has not made any admissions or begun settlement negotiations either prior to or after providing notice to Harris of the applicable claim except with Harris's 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.
- (b) Harris' liability for any claims under this Section 5.03 shall be reduced to the extent such claim arises from (i) alterations or modifications to the Software by Organization or a third party in any manner whatsoever except with the prior written consent of Harris; (ii) combination, integration or use of the Software with software, hardware or other materials not approved by Harris where such claim would not have arisen but for such combination, integration or use; (iii) use of the Software other than in compliance with this Agreement; (v) compliance with the Organization's written instructions or specifications; or (vi) use of the Software after notice from Harris that it should cease due to possible infringement.

- (c) Any breach by Organization of its covenants under this Section 5.03 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's 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.
- (d) The foregoing states Harris's entire liability, and the Organization's exclusive remedy, with respect to any claims of infringement of any copyright, patent, trade-mark, trade secret or other intellectual property and property interest rights relating to the Software, or any part thereof or use thereof.
- (e) Organization may, at Organization's sole cost and expense—which is outside the scope of this indemnity—retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.
- (f) The indemnity provisions of this Section 5.03 shall not apply to Third Party Software and Harris shall have the right to substitute the licensor of the Third Party Software to perform Harris's obligations hereunder and the Organization agrees to release Harris from any obligations related to such Third Party Software.

#### **Section 5.04 Remedies**

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

### **ARTICLE VI. GENERAL**

#### **Section 6.01 Confidentiality**

- (a) Duty Owed to the Organization -- Harris acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement. Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of the Organization or through the fault of the Organization, Harris agrees:
  - (i) to maintain this information in confidence;
  - (ii) not to use this information other than in the course of this License Agreement;
  - (iii) not to disclose or release such information;

- (iv) not to disclose or release such information to any third person without the prior written consent of the Organization, except for authorized employees or agents of Harris; and
  - (v) to take all reasonable actions, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Harris, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.
- (b) Duty Owed to Harris -- The parties agree that if the Organization breaches any term of Section 2.03 or Section 2.04 then Harris shall have the right to terminate this Agreement and the grant of Licenses herein forthwith without giving notice as set forth in Section 6.02(a).

## **Section 6.02 Termination**

- (a) If either party should fail to comply with its obligations under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party, or issue a written notice of its own disputing the alleged default, in either case within thirty (30) days immediately following receipt of a Default Notice. If the breaching party fails to (i) issue a written notice disputing the alleged default within such thirty (30) day period; or (ii) to correct the default, or issue a notice disputing the alleged default, in either case within ninety (90) days following receipt of the Default Notice, the other party may terminate this Agreement effective upon written notice to the other party to that effect.
- (b) If Organization has failed to pay the license fees in accordance with Article IV then Harris shall have the right to terminate the license rights granted herein and this Agreement effective immediately upon written notice to Organization.

Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

## **Section 6.03 Procedure on Termination**

- (a) If this Agreement is terminated prior to the Completion of Services, then within thirty (30) days following such termination, the Organization shall either return to Harris or

delete the Software from all of its locations (except as required under any statute related to retention requirements) and shall certify, under the hand of a duly authorized officer of the Organization, that all copies of the Software or any part thereof, in any form, within the possession or control of the Organization have either been returned to Harris or deleted.

- (b) If this Agreement is terminated following the Completion of Services, then the Organization may retain the copy of the Software in its possession as of the Completion of Services. Notwithstanding the foregoing, the Organization will remain subject to the obligations imposed upon it pursuant to this Agreement with respect to the Software, including, but not limited to, such obligations relating to ownership of the Software and confidentiality and all of the restrictions on the Organization as set out in Article II.
- (c) Despite Subsection (d) below, all warranties related to the Software automatically terminate upon the termination of this Agreement.
- (d) The following sections and articles shall survive the termination of this Agreement: Section 3.02, Section 3.04, Section 5.01, Section 5.02, Section 5.04, Article IV and Article VI.

#### **Section 6.04 Mediation**

Except where this Agreement explicitly states that this Section does not apply, 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. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

#### **Section 6.05 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, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after

5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of Harris, to:

N. HARRIS COMPUTER CORPORATION  
1 Antares Drive, Suite 400  
Ottawa, Ontario K2E 8C4  
Attention: CEO

and in the case of the Organization, to:

LAKE HAVASU CITY  
2330 McCullough Boulevard N  
Lake Havasu City, Arizona 86403  
Phone: (928) 854-4230  
Attn: Administrative Services Director

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.05.

#### **Section 6.06 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 to this Agreement and their respective successors and permitted assigns

#### **Section 6.07 Reorganizations**

The Organization acknowledges that the License Fee 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 similar form of corporate reorganization or transition (a "Reorganization"), and the resulting entity (whether or not the Organization is the resulting or continuing entity) requires additional Licenses to add additional concurrent users or sites, Harris shall be entitled to receive, and the Organization shall pay, an additional License fee based on the then prevailing License fee in effect. The provisions of this Section 6.07 shall apply to any subsequent Reorganizations occurring following the first Reorganization. The provisions of this Section 6.07 shall not apply where the Organization undergoes a Reorganization involving only other organizations that have already have a valid License to use the same Software. For purposes of this Agreement, any corporate changes undergone by the Organization will be characterized as either an assignment, in which case Section 6.06 will apply, or a Re-organization, in which case Section 6.07 will apply, but it is not intended that Section 6.06 and Section 6.07 will apply to any single sequence

of events, if such application would result in a duplication of the fees provided for in those provisions.

#### **Section 6.08 Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. 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, shall be deemed to bind the parties hereto with respect to the subject matter hereof. However, the parties agree that two other agreements are being entered into concurrently with this Agreement which are in addition to any of the third party agreements detailed herein. These two other agreements are the Support and Maintenance Agreement and the Software Implementation Services Agreement, each of which are separate agreements and are binding in their own right and upon their own terms. The terms of this Agreement may not be changed 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.

#### **Section 6.09 Section Headings**

Section and other headings in this Agreement are for reference purposes only, and are in no way intended to describe, interpret, define or limit the scope or extent of any provision hereof.

#### **Section 6.10 Governing Law**

This Agreement shall be governed by the laws of the State of Arizona. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) does not apply to this Agreement.

#### **Section 6.11 Trial by Jury**

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

#### **Section 6.12 Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed modified to the extent necessary in order to render such provision 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 6.13 Waiver**

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

### **Section 6.14 Counterparts**

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

### **Section 6.15 Further Assurances**

The parties shall do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated hereby, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purposes of this Agreement and carry out its provisions.

### **Section 6.16 Allocation of Risk**

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

### **Section 6.17 Relationship**

The parties are and shall at all times 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 the parties. 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 6.18 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 200, Ottawa, ON K2E 8C4.

#### **Section 6.19 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, or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Organization.

#### **Section 6.20 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 6.21 Force Majeure**

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

#### **Section 6.22 Survival**

The following sections and articles shall survive the termination or expiration of this Agreement: Section 1.01, Section 1.02, Section 2.03, Section 2.04, Section 2.05, Section 2.06, Section 3.04, Section 5.01, Article IV and Article VI and any other provisions which are required to ensure that the parties fully exercise their rights and obligations hereunder.

#### **Section 6.23 Conflict of Interest**

This Agreement may be cancelled in accordance with Arizona Revised Statutes (“ARS”) § 38-511.

**Section 6.24 Israel**

Harris certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

**Section 6.25 E-Verify**

To the extent applicable under A.R.S. § 41-4401, Harris and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Harris's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

**Section 6.26 Agreement Subject to Appropriation**

The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligation, this Agreement shall be deemed terminated at the end of then-current fiscal term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. This City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Harris informed as to the availability of funds for this Agreement. The obligation of the City to make any payment under this Agreement is not a general obligation or indebtedness of the City. Harris hereby waives any and all rights to bring any claim against the City from or related in any way to the City's termination of this Agreement under this subsection.

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

**N. HARRIS COMPUTER CORPORATION**

Per: 

Name: Steve Morris

Title: VP, Sales & Marketing

**LAKE HAVASU CITY**

Per:

Name: Jess Knudson

Title: City Manager

**Schedule "A"**  
**Description of Software**

<b>Software Provided by Consultant</b>		<b>Description of License</b>	
Northstar CIS (Qty. 15) NorthStar CustomerConnect NorthStar mCare (Qty. 8) NorthStar eDocs NorthStar RAW NorthStar EIS NorthStar RestAPI		Customer information & billing system Customer web-portal Mobile workforce management Document management Reporting Dashboards Application programming interface (API)	
<b>Third Party Software</b>		<b>Description of License</b>	
IBM Cognos		Enables reporting	

**Other Required Programs** or mutually agreed-upon equivalent **(to be provided by Organization):**

**Schedule “B”**  
**License Fees and Payment**  
**Schedule**

The license fees and schedule of payments due under this Agreement are included in the Scope of Work, attached to the Services Agreement and executed contemporaneously herewith and incorporated herein by reference.

## **Schedule “C”**

### **Third Party Software Licenses and Third Party Software Terms**

#### **THIRD PARTY SOFTWARE LICENSES FOR COGNOS**

For the purposes of this Agreement, “Software” is considered to the IBM/Cognos products outlined in 1.01 (O) as 3<sup>rd</sup> Party specifically here refers to “Cognos” sold by Harris as OEM partner of IBM/Cognos and which is further defined below.

#### **COGNOS END-USER LICENSE TERMS**

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

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

1. GENERAL - These terms govern the license by you of this COGNOS Software program, including all related user manuals and documentation, whether provided to you in physical or electronic form.

2. LICENSE- COGNOS grants you a non-exclusive, non-transferable license to use the Software for the purpose(s) for which it was provided to you. Any upgrade or new release of the Software is also subject to the provisions of this Agreement. You will not distribute or make the Software available to any other party.

3. SUPPORT - Support is available through the organization that provided you with the Software.

4. PROPRIETARY RIGHTS - All title in and rights to the Software (including any copyrights) remains exclusively with COGNOS. The rights of COGNOS are protected by local laws and International treaties. You will not decompile, disassemble or otherwise reverse engineer the Software.

5. WARRANTY - COGNOS warrants that: (a) for a period of thirty (30) days following the initial delivery/download/access of the Software, or of any new release of the Software, to or by you, the Software will perform in conformity with its related documentation, and (b) the media on which the Software is provided, if applicable, is free from defects in materials and workmanship under normal use. Subject to applicable law, all other warranties or conditions express, implied, or otherwise, are excluded. Your only remedy against COGNOS if this warranty is breached will be, at the option of COGNOS: (a) to repair or replace the Software or (b) to refund the amounts paid in respect of the defective Software. This remedy is void if you misuse the Software contrary to its related documentation.

6. LIMITATION OF LIABILITY - COGNOS will not be liable to you for any special, indirect, incidental, consequential or exemplary damages, including costs or legal expenses, in connection with the supply, use of performance of the Software, even if it is aware of the possibility of the occurrence of such damages. In certain jurisdictions the foregoing limitation may not be effective, in which case the applicable law will prevail.

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

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

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

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

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

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

Cognos Corporation  
15 Wayside Road, Burlington, MA 01803-5165, USA  
Cognos Incorporated  
3755 Riverside Drive, P.O. Box 9707, Station T, Ottawa, Ontario K1G 4K9, Canada  
Cognos Limited  
Westerly Point, Market Street, Bracknell, Berkshire RG12 1QB, U.K.  
Cognos Pty. Limited  
110 Pacific Highway, 3<sup>rd</sup> Floor, St. Leonards, NSW 2065, Australia