



Software As A Service Agreement

This **Software As A Service Agreement** (the “**Agreement**”), is entered into on _____, 2018 (the “**Effective Date**”) by and between City of Lawrence, KS, a Municipal Corporation under the laws of the State of Kansas, (“**Customer**”) and the SmartWorks Division of N. Harris Computer Corporation of 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4 (“**Harris**”).

NOW THEREFORE, in consideration of the mutual covenants and obligations contained here and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the meaning set out below; all other capitalized terms not otherwise defined in this Section shall have the meaning set forth in the Agreement:

- (a) “**Annual Subscription Fees**” means the annual subscription fees set out in Schedule “A” to this Agreement.
- (b) “**Change Order**” means any written documentation between the Customer and Harris evidencing their agreement to change particular aspects of this Agreement.
- (c) “**Completion of Services**” means the Professional Services are complete and shall be deemed to have occurred on the date which the Customer commences using the Services.
- (d) “**Confidential Information**” means, with respect to a party hereto, all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential, proprietary, or is confidential under federal or state law 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 of Harris shall include, without limitation, the Software, the Documentation, and any information with respect to the Services that Harris may provide to Customer from time to time, including without limitation, all information disclosed by Harris relating to the security of its facilities, computer systems and products. 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 and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction. Confidential Information of Harris shall include, without limitation, the Services, the Software, Documentation, and any information with respect to the Services that Harris may provide to Customer from time to time, including without limitation, the terms and conditions of this Agreement and all information disclosed by Harris relating to the security of its facilities, computer systems and products.
- (e) “**Data Conversion Fees**” shall have the meaning set forth in Section 10 of this Agreement.
- (f) “**Data**” means all data that is provided by Customer to Harris and all other content transmitted, posted, received or created through Customer’s use of the Services or the Software.
- (g) “**Documentation**” means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Software, whether distributed in print, magnetic, electronic, or video format, in

effect as of the date the Software are provided to the Customer.

- (h) **“Fees”** means the Annual Subscription Fees, Professional Services Fees, Conversion Costs and other Fees as may be further described and listed in Schedule “A” of this Agreement.
- (i) **“Professional Service(s)”** means those implementation, training, consulting and professional service(s) provided by the Harris Professional Services team as further described in Schedule “A” and Schedule “C” to this Agreement.
- (j) **“Professional Services Fees”** means the Professional Service(s) fees set out in Schedule “A” and “C” to this Agreement.
- (k) **“Services” and “Software Services”** each means the web-based service(s) commonly referred to as a “Software as a Service” (SaaS) solution to be provided by or on behalf of Harris under this Agreement that includes hosting, monitoring, operating and maintaining the Software as a service at a site owned or controlled by Harris and the delivery of non-exclusive access via the Internet to Customer to use the Software, as a service, granted to Customer pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Services.
- (l) **“Software”** means the software product(s) that are owned by Harris, delivered as a SaaS solution and listed in Schedule “A”.
- (m) **“Support Services”** means those support services to be provided by the Harris Support team as further described in Schedule “D” to this Agreement.
- (n) **“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 Customer as part of the Services.
- (o) **“User”** means an employee or agent of Customer that has been authorized by the Customer to access and use the Services.

2. Authorization

Subject to the terms and conditions of this Agreement, including without limitation, payment by Customer of the Professional Services Fees required for set-up and the Annual Subscription Fees, Harris hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term (a) to allow Users to access and use the Services on an annual subscription basis and in accordance with the Documentation solely for Customer’s internal business purposes and (b) to use, copy and modify the Documentation solely for the purpose of creating and using internal training materials relating to the Services.

3. Fees

In consideration of receiving the Services and the Professional Services, Customer agrees to pay to Harris the Fees and all applicable travel and lodging expenses as described in Section 4 of this Agreement in accordance with the payment terms as defined in Schedule “A”.

The Annual Subscription Fees, Professional Services Fees and any other fees set out in this Agreement are exclusive of taxes. Customer shall provide Harris a tax exemption certificate to evidence Customer is exempt from taxation and thereafter shall not be charged taxes on the sale, use or delivery of the services described in this Agreement so long as Customer maintains its exemption status.

If any Fees are not paid when due, then at Harris’ discretion, (a) such Fees may accrue late interest at the rate of 1.5% (18% per annum) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such fee was due until the date paid, and/or (b) Harris may suspend the Service, including all Customer access to the Service, pursuant to Section 16(b).

4. Travel and Lodging Expenses

Travel and lodging expenses will be billed in conjunction with any Professional Services work performed at Customer's offices by any Harris personnel. Harris travel expenses are billed to Customer for each Harris employee providing Professional Services as follows:

- Lodging and Hotel expenses: If the Harris employee must spend the evening.
- Airfare expenses: If the Harris employee must travel by air to reach Customer's offices.
- Rental Car or Taxi fees: As appropriate to travel to / from Customer's offices.
- Personal Vehicle expenses: If a Harris employee uses his/her personal vehicle, mileage will be charged at the currently published IRS reimbursement rate.
- Per Diem expenses: Fifty-five dollars (\$55) per day will be charged to cover meals and incidentals when an employee is at or traveling to and from Customer's offices. If an employee must travel on Saturday, Sunday, or a holiday, or is at Customer's office on a holiday, the Per Diem rate shall increase to one hundred ten dollars (\$110) per day for the corresponding days. Harris reserves the right to change the rates charged for reimbursable meals and incidentals.

Harris will use its reasonable efforts to minimize all travel and lodging expenses. Only actual travel and lodging expenses will be billed to the Customer.

5. Term

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date and shall continue for a period of 5 years from the date that the initial Software Services listed in Schedule "A" are installed and configured in Harris' hosted environment (the "Initial Term"); with evidence of said installation and configuration being by the issuance of an Invoice by Harris to Customer for the applicable Fees. After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a "Renewal Term"), as described in Schedule "A" – Payment Terms, subject to Harris' then-current price structure unless either party provides written notice to the other party of its intention not to renew within one hundred and twenty (120) days of the end of the then current term. The Initial Term and Renewal Term(s) shall collectively be referred to as the "Term".

Travel will be held within an amount not to exceed \$11,000.

6. Restrictions on Use

- (a) Except as expressly provided herein, Customer may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or 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.
- (b) Customer agrees that it will not reverse engineer, decompile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the Software or Software Services, or attempt to otherwise convert or alter the Software or Software Services into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- (c) Customer may duplicate Documentation, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.
- (d) No third party, other than duly authorized agents or employees of Customer authorized pursuant to Section 2 hereunder, shall have access to or use of the Software Services.
- (e) Customer shall not copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
- (f) Customer shall not access the Services in order to (i) build a competitive product or service; (ii) copy any features,

functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Harris.

- (g)** The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or Information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations.
- (h)** Customer shall not knowingly transmit any data to the system used by Harris to provide the Services that contains software viruses or other harmful or deleterious computer code, files or programs.
- (i)** Customer shall not interfere with or disrupt services or networks connected to the system used to provide the Services and shall not attempt to gain unauthorized access to the Services or such services or networks connected to the system used to provide the Services.
- (j)** Customer shall not use the Services to store or transmit any material that is infringing, libelous, an invasion of privacy, obscene, offensive, harmful, illegal or would otherwise violate or infringe the rights of any third party.
- (k)** Customer shall not provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- (l)** In addition to its termination rights under Section 16, Harris may restrict or limit Customer's access to the Services if Harris reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in Harris' reasonable opinion poses any risk of any kind or nature to Harris or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, Harris will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access 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 Customer in connection with its use of the 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.

7. Services Availability (SaaS)

- (a)** Harris shall provide all facilities, equipment, and software required to make the Software Services available.
- (b)** 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 "B".
- (c)** Harris reserves the right to have additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Software Services. Harris shall inform Customer of such criteria but Harris shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, Harris reserves its rights to not grant to such Users access to the Software Services. Harris reserves its rights to restrict access to the Software Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software Services.
- (d)** 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 Services. Customer, not Harris, shall be responsible for creating and maintaining all User account information and for performing all other application level system administration functions that are available within the Software Services.
- (e)** Harris shall comply with the terms and conditions regarding access and use of Data as set out in Section 18 of this Agreement.

- (f) Customer acknowledges that in order to provide the Services Harris may be required to purchase access the Third Party Components. Customer further acknowledges that the availability of such Third Party Components is based solely on the best information available to Harris and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Harris to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Harris' control, then (a) Harris shall not be in breach hereof or otherwise liable for any failure or inability to provide the 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 to terminate set out in Section 16.

8. Customer Responsibilities

- (a) **Cooperation by Customer.** Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of Customer and its staff and agrees to act reasonably and cooperate fully with Harris to achieve the Completion of Services related to any Professional Services provided by Harris. To enable Harris to provide effective Support Services, the Customer will establish auto remote access based on remote access procedures compatible with Harris' practices.
- (b) **Project Manager.** Customer shall appoint a project manager who shall work closely with Harris to facilitate the successful completion of the implementation process and who shall be responsible for supervising Customer staff and ensure their co-operation with and participation in such process during any Professional Services engagement.
- (c) **Customer Equipment.** Customer 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 Customer's facilities required for Users to access and use the Services. Harris shall not be responsible for the operation of any Internet, network or other communication services. Customer further acknowledges that access to and the operation of the Services requires Customer's and Users' hardware to be of sufficient quality, condition and repair, and Customer agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by Harris.
- (d) **Passwords.** Customer agrees to comply with all Harris security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords and user ID's assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Harris in writing if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify Harris immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.
- (e) **Users.** The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Harris from time to time for Users; and (iii) informing Harris of any information about Users' actions that may affect either the Services or third party data contained in or used by the Services, or Harris' ability to provide the Services as contemplated by this Agreement.
- (f) **Compliance with Laws.** Customer represents and warrants to Harris that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws including but not limited to those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- (g) **Data Security.** Customer 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 Customer's and its Users' (as well as Harris') computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer'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' servers; and (iii)

Data is encrypted.

HARRIS DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. WE SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS' CONNECTION TO OR USE OF THE INTERNET, AND HARRIS SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

(h) Third Party Software. Customer agrees to comply with the terms and conditions regarding third party software set out in Schedule F to this Agreement.

9. Delivery Schedule

The parties will mutually agree in writing upon a delivery schedule based on, among other things, the purchased modules, required training and availability of both Customer and Harris staff members.

10. Data Conversion Fees

Harris may offer data conversion services for the purpose of migrating existing Customer data to a format usable by the Purchased Service. The success of the data conversion effort is largely based on the format and quality of the Customer provided data. Unless otherwise indicated, converted data is strictly limited to non-dollar amounts and typically includes information such as names, addresses, and phone numbers. Only information explicitly listed in this Agreement will be converted. In certain instances, initial cost estimates for a data conversion may have been included in a Professional Services pricing proposal. Unless specifically included in this Agreement as part of Schedule "A" and "C", said cost estimates, and all prior data conversion cost estimates, are not binding nor are they incorporated into this Agreement. Accordingly, Harris shall notify Customer of the final data conversion fees and costs after the Customer provided sample data is examined by Harris to verify existing Customer data formats and data integrity; but before data conversion efforts are commenced. In such event, and upon receipt by Harris of notice in writing from Customer that said data conversion fees are acceptable, such data conversion fees (Data Conversion Fees) shall be in addition to all fees currently stated in this Agreement.

Any costs associated with obtaining the data from an existing Customer vendor are the responsibility of the Customer. Sample data shall be provided in standard fixed length format with ASCII display characters only. Data must be on a media formats readable by Harris.

In the event a data re-conversion is required, for whatever reason, Customer will be billed at the Professional Services Fee rate set out in Schedule "A" to this Agreement.

11. Professional Services & Support Services

(a) Professional Services and Support Services. Subject to the terms and conditions of this Agreement, Harris shall provide the Professional Services to Customer in accordance with Schedules "A" and "C" and the Support Services in accordance with Schedule "D".

(b) Manner of Performance. Harris shall perform the Professional Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. Harris shall determine in its sole discretion the manner and means by which the Professional Services shall be performed, with due consideration of adequate knowledge transfer to Customer personnel. Harris will communicate openly with Customer in its methodology, manner and means.

(c) Conduct on Customer's Premises. In the event that Harris is required to perform Professional Services on Customer's premises, any such Professional Services shall be performed with Customer's full co-operation and on the premises of Customer or, if agreed to by both parties, at an alternate location. Harris agrees that, while working on Customer's premises, each of its employees shall observe Customer's rules and policies provided to Harris in writing relating to conduct thereon.

12. Warranty and Warranty Disclaimer

- a) **Limited Warranty.** Harris warrants to Customer that the Services shall be performed at a level and shall substantially conform to the specifications, as stated in Harris' manuals and other documentation provided to Customer, provided that all use of the Services is for the purposes and in the environment for which they were designed and in accordance with such specifications. Customer's sole remedy in the event the 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 16(b).
- b) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 13(A), THE SERVICES, THE SOFTWARE, THE SOFTWARE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER 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, THE SOFTWARE SERVICES, 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 SERVICES OR THE SOFTWARE SERVICES SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE SERVICES CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, HARRIS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

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.

13. Limitations on Liability

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR DAMAGES ARISING OUT OF (a) DAMAGE TO TANGIBLE PROPERTY (b) INJURY OR DEATH TO PERSONS, OR (c) HARRIS' INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILL MISCONDUCT, CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF HARRIS AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE SOFTWARE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY HARRIS IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE THE ANNUAL SUBSCRIPTION FEES PAID BY CUSTOMER TO HARRIS UNDER THIS AGREEMENT.

CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL HARRIS BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE,

FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

14. Change Order Process

With respect to any proposed changes to the Professional Services defined by 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 in the allocation of the resources of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require Harris to provide additional work hours, Harris may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing the 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.

The following individuals are authorized to sign off on Change Orders on the Customer's behalf:

Name: Thomas M. Markus Title: City Manager

Name: Dave Wagner Title: Director of Utilities

Name: Mike Lawless Title; Deputy Director of Utilities

15. Cancellations and Termination

(a) Professional Services may be cancelled as follows:

Cancellation of any on-site Professional Services by Customer is allowed for any reason if done in writing more than fourteen (14) days in advance of such Professional Services. In the case of cancellation of Professional Services within fourteen (14) days or less of scheduled on-site Professional Services, Customer will be billed for any on-site fees, plus any non-recoverable costs incurred by Harris due to advance scheduling of travel. Additionally, Customer hereby acknowledges that cancellation of on-site services means that such on-site services will be rescheduled as Harris' then current schedule permits. Harris is not responsible for any delay in Customer's project resulting from Customer's cancellation of Professional Services. If additional services are required because the Customer was not adequately prepared for the on-site services, Harris will provide a Change Order to the Customer for the additional services.

(b) This Agreement may be terminated as follows:

- i. If either party is in material breach of any of its obligations or any provision 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 thirty (30) 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 correct the default within such thirty (30) day period, and did not issue a notice disputing the alleged default within such thirty (30) day period, the other party may terminate this Agreement upon written notice to the other party to that effect
- ii. If Customer has failed to pay any amounts when due under this Agreement, Harris shall have the right to (i) suspend performance of the Services (including Customer access to the Services) until all amounts are paid in full; and/or (ii) terminate this Agreement effective immediately upon written notice to Customer to that effect.

- iii. Harris may terminate this Agreement effective immediately upon written notice to Customer if Customer has breached its obligations of confidentiality or any intellectual property right or proprietary right of Harris.
- iv. 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.
- v. If any such modification, change or replacement of the original Third Party Components pursuant to Section 7(h) includes a material price increase with respect to the Services enabled by such Third Party Components or impairs Customer's ability to utilize such Services in substantially the same manner as they were utilized prior to the modification, change or replacement, Customer [may cancel the Services and] terminate this Agreement] by providing written notice to Harris within twenty (20) days after Customer's receipt of notification of such material price increase or discovery of such impairment.

16. Effects of Termination

In the event of termination or expiration of this Agreement:

- a) All rights granted to Customer in this Agreement shall immediately terminate and Harris will immediately cease to perform or provide the Services.
- b) Customer 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) Customer shall return to Harris or at Harris' option purge or destroy all copies of any Confidential Information of Harris 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 Customer confirming same within thirty (30) days.
- d) 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.
- e) Any cancellation and/or termination of this Agreement prior to the end of the Initial Term shall result in the following: an acceleration of all Annual Subscription Fees due for each year of the Initial Term not already invoiced and/or paid, which amount will be due immediately. This section will not affect Harris's right to collect any further invoiced amounts for other Professional Service Fees.
- f) Conditional upon Customer's payment of all Fees that are due to Harris, Harris will furnish the Customer 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 services to provide a copy of the Data are one to two days and will be billed at Harris' then current daily rate. Upon receipt of notice from Customer 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 Customer. 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 Customer pursuant to this Subsection; or (ii) where it has received written instructions from Customer to delete the Data. Following 90 days from the date of termination if Customer 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 Customer and Harris shall not be required to adhere to the time frames detailed above where Harris is required by law to delete such Data.

17. Ownership

- (a) **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, , and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Services, Software or underlying software except the limited right to access and use the Services in accordance with the terms of this Agreement and Harris and its licensors reserve all rights not expressly granted to Customer. Customer 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. Customer hereby grants to Harris a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services, Software, and underlying software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software.
- (b) **Customer Data.** As between Harris and Customer, all Data will remain the sole and exclusive property of Customer. Customer 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, Customer grants to Harris a world-wide, non-exclusive, royalty-free license to access the Data for the purpose of performing the Services. Access to the Data shall only be by Harris's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Harris may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

Customer grants to Harris a world-wide, non-exclusive, royalty-free license to aggregate or compile 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 Customer, its clients or any individual, company or organization ("Aggregated Data"). Harris shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants Harris the right to access Data to provide feedback to Customer concerning its use of the Services.

Customer authorizes Harris to disclose the fact that Customer is a customer of Harris and uses the Services.

(c) Data and Privacy Policy of Customer

The Customer represents and warrants to Harris that:

- i. Data that is either provided to or acquired by Harris from Customer is owned exclusively by Customer and that the Customer has full right and title to provide the Data to Harris;
- ii. Data that is either provided to or acquired by Harris is subject to a privacy policy in effect as of the Effective Date and Customer's customers have provided to Customer 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 North America;
- iii. Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Customer will not provide Harris with data of any kind for which Harris either has no need or does not have the right to collect, use and store under the terms of this Agreement.

18. Confidential Information

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, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who

have entered into a non-disclosure agreement 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.

In addition to any other restrictions on Harris' use of the Data, the confidentiality obligations above apply except to the extent that 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. Customer 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 Customer's request. Customer 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.

19. Indemnity

Customer is solely responsible for its Data, its use, and its Users' use, of the Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold Harris and its third party service providers, if applicable, and each of their respective 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 Customer or its Users; (ii) any breach by Customer or its Users of this Agreement; or (iii) Customer's 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 the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

20. General

(a) Governing Law; Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas, United States of America. This Agreement expressly excludes that body of law applicable to choice of law, the Uniform Commercial Code and the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable.

(b) 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. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable. The parties will make best efforts to schedule the mediation within sixty (60) days, however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' 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.

(c) Notice

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered either 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 the Consultant, to:

N. HARRIS COMPUTER CORPORATION
1 Antares Drive, Suite 400
Ottawa, Ontario K2E 8C4
Attention: CEO
Telephone: 613-226-5511, extension 2149

and in the case of the Customer, to:

(Not Optional. Notice info must be completed.)

City of Lawrence, KS
720 W 3rd St; Lawrence, KS 66044
Attention: Mike Lawless
Telephone: 785-832-7862
Fax: 785-832-7806

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 21(c).

- (d) **Currency:** Unless otherwise indicated, all dollar amounts referred in this Agreement are in lawful money of the United States of America.
- (e) **Use of Name.** Customer agrees to the following promotional activities in relation to the purchase of Harris' solutions, products and services: (i) Customer permits Harris to issue a mutually agreed upon press release announcing Customer's purchase of Harris' products and services; and (ii) Customer grants Harris the right to reasonably include the Customer's name and logo in published lists referencing the users of the products and services of Harris. Customer may unilaterally withdraw their consent to the above promotional activities at any time by providing written notice to Harris of said revocation.
- (f) **Entire Agreement:** This Agreement together with the Schedules attached to this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof. No terms and conditions in any Customer orders, or in any other documentation employed by or on behalf of Customer 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 the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties.
- (g) **Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- (h) **Assignment:** Customer may not assign any of its rights or duties under this Agreement without the prior written consent of Harris, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.
- (i) **Severability:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision 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.
- (j) **Allocation of Risk:** Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of the bargain between Harris and Customer

and set forth an allocation of risk reflected in the fees and payments due hereunder.

- (k) 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 law responsible.
- (l) Equitable Relief:** Customer 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 by Customer 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 Customer.
- (m) 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, floods, acts of any governmental body, acts of God or the public enemy or default of a common carrier, unavailability of Third Party Components or other disasters or events.
- (n) Survival:** Sections 1 (Definitions), 3 (Fees), 4 (Travel and Lodging Expenses), 6 (Restrictions on Use), 8(f) (Compliance with Laws), 8(g) (Security), 13 (Warranty and Warranty Disclaimer), 14 (Limitations of Liability), 17 (Effects of Termination), 18 (Ownership), 19 (Confidential Information), 20 (Indemnity), 21 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their 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.
- (o) Counterparts:** This Agreement may be executed in counterparts (whether by facsimile signature, PDF via email, or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Harris and the Customer have duly executed this Agreement to be effective on the Effective Date first written above.

N. HARRIS COMPUTER CORPORATION

City of Lawrence, KS



Signature

Signature

Ryan Williams

Thomas M. Markus

Name

Name

Vice President - Business Development

City Manager

Title

Title

March 09,2018

Date

Date

Schedule "A"
Fees and Payment Schedule *

Purchased Software: As described in Schedule C of this Agreement.

Annual Recurring Fees (includes support services)	Amount
Software Annual Subscription Fee:	\$71,063

Professional Services: One Time Initial Set-up Fees	Amount
Professional Services provided per Schedule "C" of this Agreement.	\$87,000
Travel expenses per Section 4 of this agreement	\$11,000

* 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. All pricing is exclusive of applicable sales, use or similar taxes. Customer is responsible for any such taxes that may apply; if Customer is tax exempt, evidence of such tax exemption must be provided. Lapsed payments may lead to denial of access to the Service in accordance with Section 16(b)(ii) of the Agreement.

PAYMENT TERMS:

The Annual Subscription Fees for the Initial Term will be invoiced based upon the Milestones below. The Annual Subscription Fee for each Renewal Term shall be invoiced on the annual anniversary date beginning one (1) year after the "Upon AMI Contract Execution" Milestone. Annual Subscription Fees are non-refundable.

Professional Services Fees stated above, and any applicable travel and lodging expenses, will be invoiced according to the milestones below, and shall be due and payable thirty (30) days from the date of invoice.

Payment Milestones	Amount	Comment
Software Annual Subscription Fee:		
- At contract	\$28,426	40% SaaS
- Upon AMI Contract Execution	\$35,531	50% SaaS
Setup (Services) Fees		
- At Contract	\$33,800	\$25K setup + SCADA + Report Discovery
- At completion of CIS integration discovery	\$10,640	AUS Pass-through (SmartWorks pays AUS)
- Delivery of CIS Business Requirements Documents	\$15,960	AUS Pass-through (SmartWorks pays AUS)
- Delivery of CIS Integration	\$21,280	AUS Pass-through (SmartWorks pays AUS)
- CIS Integration Go-Live	\$5,320	AUS Pass-through (SmartWorks pays AUS)
- Completion of MDM UAT	\$7,106	10% SaaS
Travel Fees		
Travel Fees not to exceed	\$11,000	

Project Totals	\$169,063
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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 twenty (\$220) 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 Harris 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 paragraph 4.

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

RESET OF TERM TO MATCH FISCAL YEAR:

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

Schedule "B"
Service Availability

Availability and Uptime Objectives:

1. Availability of the Services is defined as when the Software Services are operational and accessible via a public internet connection. The Services shall be unavailable during certain scheduled downtime periods for the purpose of conducting maintenance and upgrades to the Services.
2. Uptime is defined as the time that the Services are either available or in scheduled downtime. Specific Service Level Objectives relating to Uptime are as follows:
 - a. Routine scheduled downtime shall not exceed eight (8) hours per month, averaged over twelve (12) months. Scheduled downtimes shall occur, to the extent practicable, during the weekend hours from 10:00 p.m. Friday to 3:00 a.m. Monday Eastern Time.
 - b. Harris shall notify Customer a minimum of five (5) calendar days prior to any period of scheduled downtime.
 - c. In the case of an emergency or other non-routine maintenance event, Harris reserves the right to suspend the Services and Customer's access to the Software for purposes of conducting such maintenance work at any time as deemed appropriate by Harris in its sole discretion, without prior notice to Customer, but will use best efforts to notify Customer of such suspended access as soon as practically feasible.

Harris shall make commercially reasonable efforts to achieve the service level objectives described herein.

3. Harris will not be responsible for any failure to meet the above Service Level Objectives if the failure is caused by:
 - a. Customer's network infrastructure (equipment, software or other technology), Customer's connection to the Internet or an Internet failure beyond the control of Harris;
 - b. A breach of the Agreement by Customer, its employees, subcontractors or agents ("Customer Representatives");
 - c. [An error or] The negligence or intentional acts or omissions of Customer Representatives or Users;
 - d. [Emergency or] Scheduled maintenance or other mutually agreed upon downtime; or
 - e. Any other force majeure event, as set out in Section 21(l) of the Agreement.

Schedule "C"
Professional Services
Statement of Work (SOW)

Schedule “D”
Support Services



Standard Support and Maintenance Services
SmartWorks Products

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

SmartWorks reserves the right to make modifications to this document as required.

Last Updated: January 31, 2018

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• Standard Support and Maintenance Services – Guidelines

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

- Support for the SmartWorks products as implemented by our Professional Services group includes:
 - The SmartWorks products and all default functionality
 - The SmartWorks product side of the interfaces with other third party systems, as implemented by our Professional Services Consultants
 - Customized rules developed by Professional Services staff. Rules developed or modified by the Organization are not supported through the standard Support and Maintenance agreement.
 - The integrity of the data within the SmartWorks products, to the extent that the SmartWorks product has manipulated it. The SmartWorks products are not responsible for the completeness or accuracy of the data originating in third party systems (e.g. AMI, CIS, etc.)
 - Advice on VEE parameter settings and processes, however the VEE settings themselves are the responsibility of the Organization
- We will create and install software updates (release notes will be available upon request and on the Customer Hub) that may include:
 - Defect corrections (as warranted)
 - Planned enhancements
 - State (Provincial) and/or Federal mandated changes (charges may exist depending on scope)
 - From time to time, we will provide software upgrades (note that there may be charges in implementation depending on the scope of services)
- We will troubleshoot customer issues and provide recommendations for resolution
- We will provide remote training on subjects of limited scope. As a rule of thumb, a subject of limited scope can be addressed in about 15 minutes over the phone. If a customer makes numerous training requests in a short period of time, we may deem the training requests to be of a broad nature.
- HealthWatch - Online Diagnostics
 - HealthWatch rules will collect data and alert Support Services when specific thresholds have been met (e.g. disk space limit reached, no interval data for two days, etc.)
 - We will proactively monitor your solution to identify small issues before they become big problems using our HealthWatch tool. Depending on the nature of the issue, we may either alert you or attempt to address the issue ourselves.
 - If customer decides to opt-out of HealthWatch, charges may apply.
- Customer Care Program. On a periodic basis, we will share useful information regarding the use of your SmartWorks products and our services through one or more of the following methods:
 - Support Bulletins
 - Communication on new products and services
 - On-site visits (as required)
 - Webinars
 - Surveys
 - Knowledge Base
- If requested, provide an Outstanding Tickets Report with conference call
- Ability to attend the annual customer conference (attendance fees apply)
- Opportunity to participate in BETA programs at our discretion
- We shall provide an online ticketing system with the following features:
 - Ability to log and close tickets

- Ability to view and update tickets
- Ability to update contact information
- Access to published documentation
- Access to support knowledge base
- Ability to report on metrics
- 800 Toll Free Telephone Support (Call SmartWorks at 1-877-696-0125)

• Organization Responsibilities

In order to effectively provide our support services, the customer Organization is responsible for the following items:

- Organization shall notify Consultant of suspected defects in any of the Software supplied by Consultant. Organization shall provide, upon Consultant request, additional data deemed necessary or desirable by Consultant to reproduce the environment in which such defect occurred.
- Organization shall allow the use of online diagnostics on the Software supplied by Consultant to Organization. Organization shall provide to Consultant, at Organization's expense, access to the Designated Computer System via the Organization's communications software.
- Organization shall ensure that its personnel are, at relevant stages of the project, educated and trained in the proper use of the Software in accordance with applicable Consultant manuals and instructions. If Organization's personnel are not properly trained as mutually determined by Consultant and Organization, Organization agrees that such personnel will be trained by Consultant or Organization within fifteen (15) days of determination. If Organization desires Consultant to perform the required training then Consultant shall be compensated in accordance with this Agreement.
- Organization shall establish proper backup procedures necessary to replace critical Organizational data in the event of loss or damage to such data from any cause. Organization shall provide Consultant with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair of the Software in the event of error, defect or malfunction.
- Organization shall have the sole responsibility for:
 - The performance of any tests it deems necessary prior to the use of the Software.
 - Assuring proper Designated Computer System installation, configuration, verification, audit controls and operating methods.
 - Implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.
 - Timely upgrade and keeping current all third party license releases and/or Software products to meet the requirements of the Consultant Software.
- Organization is responsible for the data quality, completeness, and availability from 3rd party applications on which SmartWorks product relies.
- Organization shall be responsible for rules created and/or edited by Organization staff.
- Organization shall be solely responsible for all VEE parameters settings, the regular monitoring of validation failures, and the rectification of any validation failures.

• Solution Updates

SmartWorks will make software updates available from time to time. When an update is available, SmartWorks will make an announcement to its customers.

Customers are expected to make commercially reasonable efforts to keep current on the latest version of the SmartWorks Software.

Once a new version is available, you shall have 6 months to update your software. After that time, SmartWorks will charge you at the standard services rate for any support related activities performed by SmartWorks in addition to the support fees you are already paying.

Further, SmartWorks will not provide any support services for customers on a version that is more than one (1) version older than the current version.

● Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services.

- Provision of remote or on-site training on subjects of broad scope
- New interfaces or connections to non-SmartWorks (or third party) applications
- Creation of test instances
- Custom modifications (e.g. rules, reports, new data, etc.)
- Data conversions and global modification to setup table data
- Database maintenance, repairs and optimization, refreshes, backups, restores
- Extended Hardware and Operating System support
- Upgrades and support of third party software (e.g. database software, OS, web server, etc.)
- Installations and/or re-installations of software solution
- Support for rules, reports, database procedures, or screens developed by, or modified by, the Organization
- Cleansing or re-processing of data originating from a third party system (e.g. AMI, CIS, etc.)

Note: If customer purchases a billable service with a maintenance fee such as the ones listed above, the Organization is responsible for supporting these items.

● Test Databases and 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 Test Databases and Environments is a billable service; quotations and incremental maintenance rates will be provided on request.

● Operations

●

● Hours

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

- ## Holiday Schedule

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

New Year's Eve	Early Closure (noon EST)
New Year's Day	Closed
President's Day (USA) /Family Day (Canada)	Closed
Victoria Day (Canada)	Closed
Labor Day	Closed
Canada Day (Canada)	Closed
Thanksgiving Day (Canada)	Closed
Christmas Eve	Early Closure (noon EST)
Christmas Day	Closed
Boxing Day (Canada)	Closed

- ## Ticket Process

All issues or questions reported to support are tracked via a TeamSupport Customer Hub ticket. Our support analysts cannot provide assistance unless a support ticket is logged. The use of a TeamSupport ticket allows us to track the resolution of your issues. As well, it helps us measure our activities so we can properly forecast our staffing requirements. Our current process for logging tickets includes the following: TeamSupport's SmartWorks Customer Hub (via website), email, phone and fax.

- Your ticket must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our support system or one of our support analysts will provide you with a ticket id to track your issue and your ticket will be logged into our support tracking database.
- Your ticket will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- As the support representative assigned to your tickets investigates your issue, you will be notified of status updates, actions and a resolution plan via the support ticketing system. If we require additional information, you will be contacted by the assigned support representative to supply the information required.
- All correspondence and actions associated with your ticket will be tracked against your ticket ID in our support database. At any time, you may log onto our website to see the status of your ticket.
- Once your issue has been resolved, the ticket will be set to a "Resolved" status. You will then have time to evaluate the resolution and provide feedback. Once you are satisfied that the issue has been addressed, you will then close the ticket. We will do our best to provide you with adequate time to evaluate the resolution. However, we will then close a ticket if we do not receive any feedback for an extended period of time. You will always be notified of a pending or actual ticket closure. You will have the option of re-opening the ticket if needed.

- Once your ticket has been closed, you will receive an automated notification by email. This email will contain the entire event history of the ticket from the time it was created and leading up to the resolution of the ticket. You also have the option of viewing both your open and closed tickets, if available to you, via our website.
- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be forwarded to our development team. Your support ticket will remain open until our development team provides a response. If a development item opens, you will be provided with a development tracking number upon request. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue. If an issue is determine to be an enhancement or feature, we will log a ticket in our product management queue and will notify you when a release has been made available.
- You may contact the support department at your convenience for a status update on your development issues.

• Ticket Priorities

In an effort to assign our resources to incoming tickets as effectively as possible, SmartWorks has identified three ticket priorities: 1(high/critical), 2(medium), and 3(low). The criteria used to establish a ticket priority are as follows:

Priority Level	Description
1	<ul style="list-style-type: none"> • System Down (Software Application, Hardware, Operating System, Database) • Program errors without workarounds • Incorrect calculation errors impacting one-third of records • Error messages preventing data integration and update • Performance issues of severe nature impacting critical processes • Security Issues <p><i>Note: in most cases issues affecting a test environment only will not be considered a priority of 1</i></p>
2	<ul style="list-style-type: none"> • System errors that have workarounds • Calculation errors impacting less than one-third of records • Reports calculation issues • Performance issues not impacting critical processes • Usability issues • Workstation connectivity issues (Workstation specific)
3	<ul style="list-style-type: none"> • Training questions, how to, or implementation of new processes • Aesthetic issues • Issues where a workaround is available for a large majority of cases • Recommendations for enhancements on system changes • Questions on documentation • Test environment issues or questions

• Response Times

Response times will vary and are dependent on the priority of the ticket. We do our best to ensure that we deal with incoming tickets in the order that they are received, however, tickets will be escalated based on the urgency of the issue reported. If a support ticket is logged during standard operating hours, our response times are as follows:

Priority	Initial Response Time *	R&D Response Time from Escalation	Update Frequency
1	Within 4 hours	Same day	Every 2 business days
2	Within 8 hours	Within one week	Every 5 business days
3	Within 24 hours	Within 3 weeks	Every 10 business days

* During Business Hours

Example:

- Priority 1 Support Ticket received Monday January 2 at 10 am >> Support Analyst responds Monday January 2 by noon >> Support Analyst sends update Monday January 2.

- Priority 1 Support Ticket received Monday January 2 at 9 PM >> Support Analyst responds Tuesday January 3 by noon >> Support Analyst sends update Tuesday January 3.

● **Escalation Process**

We strive to provide a satisfying and positive support experience. However, if at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate within Support Services, as follows:

Level 1: Your ticket’s assigned Support Analyst

Level 2: Team Lead, Support Services

Level 3: Manager, Support Services

Level 4: Executive Vice President, SmartWorks

Schedule “E”

Security

1. Harris shall store and process Data in accordance with commercially reasonable practices, including appropriate safeguards, to secure such Data from unauthorized access, disclosure, alteration and use.
2. Harris shall ensure that its employees and subcontractors who have potential access to Data have undergone appropriate background screening and possess the required qualifications to comply with the terms of this Agreement.
3. Response to Legal Orders, Demands or Requests for Data.
 - a. Where permitted by law Harris shall:
 - i. Promptly notify the Customer of any subpoenas, warrants, or other legal orders, demands or requests received by Harris seeking Data;
 - ii. Consult with the Customer regarding its response;
 - iii. Cooperate with the Customer’s reasonable requests, at Customer’s expense, in connection with efforts by the Customer to intervene and quash or modify the legal order, demand or request; and
 - iv. Upon the Customer’s request, provide the Customer with a copy of its response.
 - b. If the Customer receives a subpoena, warrant, or other legal order, demand (“requests”) or request seeking Data maintained by Harris, Customer will promptly provide a copy of the request to Harris. Harris will, where permitted by law, promptly supply Customer with copies of records or information required for the Customer to respond, and will cooperate with Customer’s reasonable requests, and at Customer’s expense, in connection with its response.