

**33557**

**SOFTWARE LICENSE AGREEMENT**

**THIS AGREEMENT** made as of the 1 day of September, 2014.

**BETWEEN:**

**N. HARRIS COMPUTER CORPORATION**  
("Harris")

- and -

**CITY OF LONG BEACH**  
("Organization")

**RECITALS**

1. Harris owns the Software (as defined below);
2. The Organization wishes to acquire a license to utilize the Software
3. Harris wishes to grant the Organization a license to utilize the Software.
4. The Organization and Harris agree to enter into three (3) separate agreements each dealing with a separate aspect of the Software: a Software License Agreement, a Support and Maintenance Agreement and a Software Implementation Services Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants set out in this License 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 License Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meanings:

- (a) "**Completion of Services**" means that the Software is fully operational and performing in conformity with the specifications set out in the Software Implementation Services Agreement. For purposes of this Agreement, Completion of Services will be deemed to have occurred on the date which the Organization commences using the Software as it's predominate business system.

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- (b) **“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”.
- (c) **“Confidential Information”** means, with respect to a party to this License Agreement, 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 or proprietary, such as the Software, 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; (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information; or (v) is required to be made public pursuant to the *California Public Records Act*.
- (d) **“Designated Computer System”** shall mean the Organization’s platform and operating system environment which is operating the Software.
- (e) **“Documentation”** means user guides, operating manuals, educational materials, product descriptions and specifications, technical manuals, supporting materials, and other information regardless of the media on which it is provided.
- (f) **“End User”** means a customer of Organization to whom Organization will provide access to the interface portion of the Software.
- (g) **“License”** means the license granted to the Organization pursuant to Section 2.01 hereof and includes both a Concurrent User License and a Site License.
- (h) **“License Agreement”** means this Software License Agreement.
- (i) **“Release”** means an Update and/or an Upgrade.
- (j) **“Required Programs” and “Required Hardware”** have the meaning set out in Section 3.03.
- (k) **“Site License”** means a license that restricts the Software such that it can reside in one production environment and unlimited non production environments.
- (l) **“Software”** means the software products that are listed in Schedule “A” and to which the License applies. Third Party Software is not included in the definition of Software except where this License Agreement explicitly states otherwise.
- (m) **“Third Party Software”** means the third party software product licensed to Consultant by Bit Stew Systems Inc. and which is sold under the trade-mark “Customer Connect”

and described in Schedule "C" or any third party software product that is identified as such in any amendment to this License Agreement.

- (n) "Update" means a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes.
- (o) "Upgrade" means a major overhaul of the Software which is a complete new version of the Software.
- (p) "User" means any employee of Organization or any of Organization's agents who are authorized by Harris pursuant to the terms of this License Agreement to have access to the Software.

### **Section 1.02 Currency**

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

### **Section 1.03 Schedules**

The Schedules described below and appended to this License Agreement shall be deemed to be integral parts of this License 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 License Agreement and the terms and conditions in any Schedule, the terms and conditions of the main body of this License Agreement shall control.

## **ARTICLE II. SOFTWARE LICENSES**

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

- (a) Subject to the terms and conditions of this License Agreement, 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 (the "License") in consideration for the payment of the License fees. 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. 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) 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 Software Licenses 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**

The License commences on the date of this License Agreement. The License is perpetual and of indefinite duration and shall continue to be in force unless terminated pursuant to the terms hereof.

**Section 2.03 Restrictions on Use**

- (a) Without limiting the generality of the License granted in Section 2.01 and the other restrictions listed therein, Organization shall not, and will not allow, direct or authorize (directly or indirectly) any other party to: (i) use the Software for any purpose other than in connection with Organization's primary business or operations; (ii) disassemble, decompile, reverse engineer, defeat license encryption mechanisms, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software except and only to the extent that applicable law expressly permits, despite this limitation; (iii) modify or create 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 License Agreement may expressly permit Organization to do otherwise.
- (b) Organization requires a separate License for each Designated Computer System in a production environment into which the Software or any portion thereof is read in machine-readable form for operation on such Designated Computer System in a production environment.
- (c) 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 License Agreement as of the effective date. 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, the Software and any other computer applications, shall continue to be the property of Harris.
- (b) Only where the Organization requests custom materials or documents, then upon the agreement of the parties in writing as evidenced by a duly executed statement of work, the Organization shall be the exclusive owner of all such custom, materials and documents which are developed or prepared by Harris specifically for the Organization so long as such customer materials and documents are specifically described as being deliverables that are subject to this Subsection 2.05 (b) in the relevant statement of work, except to the extent to which such materials or documents may contain pre-existing Harris materials, in which case the statement of work will describe the license for such pre-existing Harris materials. Harris's only warranties and representations in respect of such software shall be in the relevant statement of work and no warranties or representations of any kind are provided in this License Agreement.

#### **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 License Agreement was developed and delivered to Harris by one or more third party software companies and Harris is distributing and sublicensing the Third Party Software to Organization in accordance with the terms in Schedule "C". As such, 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 License Agreement may state otherwise. In relation to the Third Party Software that is the Customer Connect software licensed by Bit Stew, the terms of Schedule "C" apply.

- (c) Organization acknowledges that its interest in the Third Party Software shall be in the nature of a sublicense with one or more of the Third Party Software licensors which may place restrictions on Organization's use of the Third Party Software as set forth in Schedule "C". The Organization acknowledges that all remedies available to the Organization in relation to the Third Party Software are provided as detailed in Schedule "C".

### **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 if the Software is used in accordance with the Documentation, the terms of this License Agreement and where the Organization has the Required Programs the Required Hardware. The Organization's primary recourse in the event the Software does not conform to the Documentation is the repair and replacement of the Software.
- (b) it has the full right, authority and power to enter into this License Agreement and to grant to the Organization the Licenses and rights conveyed by this License Agreement.

#### **Section 3.02 No Other Warranties**

The express warranties contained in this Article III are in lieu of all other representations, warranties and conditions, express or implied, whether arising by statute or otherwise in law or from a course of dealing, or usage of trade, including all warranties related to the merchantability and fitness for a particular purpose of the Software. No warranties are provided in relation to Releases in this License 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. Without limiting the generality of the foregoing, Harris does not represent or warrant and the Organization acknowledges that there are no further representations or warranties:

- (a) that the functions contained in the Software will operate in the combinations which may be selected for use by the Organization or will meet the Organization's requirements and satisfy its intended results;
- (b) that the operation of the Software will be error free.

### **Section 3.03 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) The Organization acknowledges that the use of the Software requires the that the Organization have at minimum the hardware as may be referenced by Harris programs (the “**Required Hardware**”) as detailed in the attached Schedule “A”. 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 the Software Implementation Services Agreement and Upgrades about which Organization is provided with commercially reasonable advance notice and the general use of the Software by Organization. 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 strive to remedy any hardware deficiencies within 30 days of notification

### **Section 3.04 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 License 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 the relevant scope of work or in this License 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) natural disasters, power surges, lightning strikes, and the like.



**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", 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 date that this License Agreement is executed, in which case the payment is due on the date of execution, during the term of this License 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 License 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 License 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 License Agreement.
  - (i) EXCEPT FOR DAMAGES ARISING OUT OF (a) HARRIS'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (b) HARRIS'S INDEMNIFICATION OBLIGATIONS SET FORTH IN Section 5.03, BOTH PARTIES AGREE THAT THE AGGREGATE LIABILITY OF HARRIS TO ORGANIZATION FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS LICENSE AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, THE LICENSE FEES PAID BY ORGANIZATION TO HARRIS UNDER THIS LICENSE AGREEMENT.
  - (ii) IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES,

INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS LICENSE AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**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 License 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 License 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. 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.

- (b) 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 property interest rights relating to the Software, or any part thereof or use thereof.
- (c) 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.
- (d) The indemnity provisions of this Section 5.03 shall also apply to the Customer Connect Third Party Software. For all Third Party Software, Harris shall have the right to substitute the licensor of the Third Party Software to perform Harris's obligations hereunder to the extent that the licensor of the Third Party Software has contracted with Harris to indemnify Harris for similar issues in relation to the Third Party Software and/or as Harris may be required to do pursuant to the terms of its license.
- (e) The indemnity provisions of this Section 5.03 shall not apply to any other Third Party Software.

#### **Section 5.04 Remedies**

Where remedies are expressly afforded by this License 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 License Agreement, notwithstanding any remedy otherwise available at law or in equity.

### **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 License 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 License Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.

## **Section 6.02 Termination**

- (a) Subject to Section 6.02(c), if either party should fail to comply with its obligations under this License 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 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 the whole of this License Agreement.
- (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 and this License Agreement immediately without complying with Section 6.04.
- (c) Despite anything to the contrary, if Organization breaches any term of Section 2.03 or Section 2.04 then Harris shall have the right to immediately terminate this License Agreement and the grant of the Licenses herein.

## **Section 6.03 Procedure on Termination**

- (a) If this License 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 License 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 License 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 License Agreement.
- (d) The following sections and articles shall survive the termination of this License Agreement: Section 3.02, Section 3.04, Section 5.01, Section 5.02, Section 5.04, Article IV and Article VI. Section 5.03 shall survive but shall only relate to an act of infringement that existed as of or prior to the effective date of termination.

**Section 6.04 Mediation**

Except where this License 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 License Agreement or the relationship created by this License 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 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.

**Section 6.05 Addresses for Notice**

Any notice required or permitted to be given to any party to this License 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  
Telephone: 613-226-5511, extension 2149

and in the case of the Organization, to:

CITY OF LONG BEACH  
333 W. Ocean Blvd  
Long Beach, CA  
Attention: City Attorney  
Telephone: (562) 570-6555

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 License 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, sale of substantially all of its assets, merger or other change in legal status. The License Agreement shall inure to the benefit of and be binding upon the parties to this License Agreement and their respective successors and permitted assigns

**Section 6.07 Reorganizations**

The Organization acknowledges that the License fee set out in this License 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 support the system, 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 purchased a License from Harris only to the extent that the License is for the same Software. For purposes of this License 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 Reorganization, 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 License Agreement shall constitute the entire agreement between the parties hereto with respect to the matters covered herein with respect to the License of the Software. No other 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 License 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.

**Section 6.09 Section Headings**

Section and other headings in this License 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 License Agreement shall be governed by the laws of the province of Ontario and Canada therein. 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 License 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 License 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 to be severable.

**Section 6.13 Waiver**

A term or condition of this License 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 License Agreement or by law despite such forbearance or notice.

**Section 6.14 Counterparts**

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



IN WITNESS WHEREOF the parties hereto have duly executed this License Agreement to be effective as of the date first written above.

**N. HARRIS COMPUTER CORPORATION**

Per: \_\_\_\_\_

Name: Chris J. Lewis  
Title: Executive Vice President

**CITY OF LONG BEACH**

Assistant City Manager

Per: \_\_\_\_\_

Name: Patrick H. West  
Title: City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM

10-9 2017

CHARLES PARKIN, City Attorney

By \_\_\_\_\_

RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

**CITY OF LONG BEACH**

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



HARRIS UTILITIES CONTRACT DOCUMENT  
**SCHEDULE A – CITY OF LONG BEACH**  
**SOLUTION DESCRIPTION**

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## **1. OVERVIEW**

### **1.1. Harris Utilities Applications**

The Harris Utilities SmartWorks solution suite includes the following software applications.

CustomerConnect modules:

HomeConnect module – online portal for Residential customers

SmartWorks Framework

MeterSense MDM

SmartWorks Compass modules:

Distribution Optimization

Outage Supervision

Rate & Revenue Analysis

Permalog Integration

Forecasting

KPI Dashboard

Process Automation

Task Manager

Weather Content

AMI Routing Analysis

Direct C&I Meter Reading

IESO Integration

All functions require configuration for each specific customer environment. Harris Utilities typically provides Professional Services for such configuration. While this document defines the software capabilities, the Statement Of Work defines the configuration that will be performed for this project.

### **1.2. Delivery Models**

The Harris Utilities applications are delivered under one of two different models:

- Software as a Service Agreement, in which case Harris takes responsibility for the setup and maintenance of the server, operating system and database software.
- Premise based solution, in which case the Utility takes responsibility for the setup and maintenance of the server, operating system and database software.

## **2. CUSTOMERCONNECT**

CustomerConnect is an online portal that includes the functionality that can be configured to help the utility engage its customers.

### **2.1. HomeConnect**

HomeConnect is an online portal that includes the following functionality that can be configured to help the utility engage its residential customers:

- Consumption Interval Data presentation
- Comparison of consumption with previous day, week, month and billing cycle.
- Overlay Temperature, where the weather content feed has been configured.
- Set up threshold notifications
- View a Library of information served up by the utility.

### **2.2. BizConnect**

BizConnect is an online portal that includes the following functionality that can be configured to help the utility engage its Commercial & Industrial customers:

- Consumption analysis to identify variability inefficiencies and savings opportunities through the comparison of multiple different meters and multiple different time periods.
- Reporting of consumption by time of use period, block or tier.
- Reporting on net metering and/or deduct metering.
- Establishment of consumption thresholds and monitoring of progress toward thresholds.
- Meter Event reporting.
- Cost calculations.

### **2.3. Pre-Requisites**

- Interface to Utility System of Record or proxy system for synchronization of customer and account data.
- Access to consumption in the form of Interval data in the SmartWorks Framework.
- Implementation Services are required to install and configured the product for each specific utility environment.
- For premise-based solutions, a domain name and SSL certificate must be purchased by the customer. For SaaS this is provided by SmartWorks.

- When integrating with an existing customer portal, single sign on Integration services from the existing portal vendor must be available.

### **3. SMARTWORKS FRAMEWORK**

#### **3.1. Description**

The SmartWorks Framework is the technology platform on which MeterSense MDM and all SmartWorks Compass modules are deployed. It provides the data schema, interfacing infrastructure, data storage, audit trails, security setup, user roles and permissions for these modules.

#### **3.2. Pre-Requisites**

- The SmartWorks Framework requires a server matching the recommended specifications for the modules that will be deployed. This server must be equipped with Linux operating system and Oracle database. For solutions hosted by Harris, Harris provides the server, operating system and database in accordance with the hosting agreement.
- Secure Network connectivity is required between the framework servers and the systems it integrates with, including AMI, CIS, and user web browser access. All such connectivity must be within a local network, or via site to site VPN tunnels.
- For premise-based solutions, connectivity to the servers must be granted to SmartWorks personnel, via site to site VPN or software VPNs.
- Implementation Services are required to install and configured the product for each specific utility environment.

#### **3.3. Open Source Code**

For some components of our applications we utilize open source code. This is done judiciously where we can realize and pass on to our customers significant benefits of cost-effectiveness and reliability through proven open source code that is widely available.

Examples include Apache Tomcat and Java components.

#### **3.4. Data Storage**

The software stores imported data in the raw interval with associated units of measure that were delivered from the AMI system. MeterSense stores both intervals and register reads.



The solution also stores validated intervals and register reads, at 5-, 15-, 30- or 60-minutes intervals. The solution tracks the versioning of consumption data. The length of history retained online in MeterSense is determined by database server sizing and by the Customer's data retention strategy.

The solution includes the storage of Billing Cycles for reporting purposes and TOU periods for framing of interval data when required. It includes storage of meter-to-transformer relationships in order to enable transformer loading analysis.

### **3.5. Actions/Commands**

MeterSense provides the capability to perform actions or execute commands where enabled by the third party systems with which MeterSense is communicating, and where the appropriate integration is implemented. These actions include on-demand reads and remote service switch operation (where there is a service disconnect switch at the meter).

### **3.6. System Interfaces**

The SmartWorks Framework includes the software capabilities for the following interfaces, where the appropriate integration is implemented.

#### **3.6.1. Data Synchronization**

The system includes the capability for synchronization of meter, account and location information with the CIS or other system of record for the initial download and ongoing synchronization.

#### **3.6.2. Periodic Data Import**

The system includes the capability for automated import daily (or more frequently) from the AMI/AMR system for usage and event data.

#### **3.6.3. Workflow Interfaces**

The SmartWorks Framework includes access to our web service APIs, including MultiSpeak services and our proprietary SOAP API.

The system has the ability to integrate with other utility enterprise systems to exchange data and workflow and typically includes GIS, SCADA, OMS, Asset Management, Engineering Tools, Distribution Modeling, Work Order Management, etc. Integration with these systems requires planning with the utility, and collaboration from the third party vendor, to both develop the workflow process, configure the system, deliver, and test. Refer to the Statement of Work for details associated with this project.

## **4. METERSENSE MDM**

### **4.1. Description**

MeterSense MDM (Meter Data Management) is a comprehensive meter data management system that is configured specifically for each utility. MeterSense provides a robust platform for management and long term storage of data from various metering systems and delivers the following functionality

- Meter-to-Cash (data import, validation and billing determinants)
- AMI Health & system performance
- Store & view meter notifications

### **4.2. Validating, Estimation & Editing (VEE)**

The system includes automated Validating, Estimation & Editing (VEE). VEE includes configurable routines based on industry standards to identify gaps or anomalies in the usage data. It also includes configurable routines to estimate usage data to fill gaps and fix data anomalies.

Manual editing is enabled through a user interface view that can be searched, sorted or filtered by the user. This view includes context sensitive links to other information that is useful in understanding a validation failure and acting on it, including links to other reads, raw reads, register reads (raw and validated) and meter events for the meter.

### **4.3. Periodic Data Export**

The system includes the capability for daily (or more frequent) export of billing determinants to the CIS for billing purposes.

### **4.4. Reporting & Analysis**

The solution includes standard reports for Meter Usage & Event Data Reporting within the native user interface. Report types include:

- Maps showing meters filter by factors such as type or status
- AMI Communications consistency & data completeness
- AMI Service Level reporting (quantity of reads versus expectations)
- Meter Problems
- Meter Usage and Event data
- Billing functions
- Setup/Configurations/Utilities



Dashboards show combinations of information on AMI Service Level, data summary and map views.

## 5. SMARTWORKS COMPASS

SmartWorks Compass is a suite of modules that use the data from a meter data management system and/or other systems to streamline utility processes beyond those associated purely with the meter-to-cash workflow.

SmartWorks Compass modules are deployed on the SmartWorks Framework. The modules are described below. Some of the modules, e.g. Outage Supervision, are aimed at streamlining specific processes. Other modules, e.g. Task Manager, provide tools that may be applied across many processes. The modules may be deployed in combination to maximize their value based on the objectives and environment of a specific utility.

### 5.1. Distribution Optimization

Distribution Optimization involves understanding the operation of a water, gas or electric distribution system and help to determine opportunities for reducing losses, balancing supply and demand, or improving efficiency. It includes the following functions:

- Transformer Loading report that quantifies the loading of distribution transformers by aggregating the metered loads fed by each transformer. This function requires known meter-transformer relationships. The aggregated loads are compared to the nameplate rating of each transformer and optimum operating band in order to identify overloaded and underloaded transformers, as well as the contributors to demand. Analyses show the load profile, load duration curve and load characteristics for each transformer. What-if analysis is provided to assess the impact of load growth and the effect of re-sizing a transformer.
- Loss Analysis to compare aggregated loads with the metered consumption at a defined point in the distribution network.
- Loss Correlation to assess the correlation of loss profiles with individual loads in order to help identify the source of losses.
- Line Graph Analysis to visualize profiles and trends using line plots and quantify max, min, average as well as the correlation coefficient between consumption or losses and other operational variables.

#### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.
- Integration with AMI Head End System (HES), which will deliver usage interval data.
- Synchronization with CIS or other system of record for association of meters with locations and accounts, plus the status of the account (active/inactive).
- For transformer loading analysis, the nameplate KVA rating of transformers must be defined.
- Map views of transformer loading require latitude/longitude information for each meter to be available via synchronization with the system or record for this information.
- Loss Analysis requires metered interval usage at higher points in the distribution system to be loaded into the framework. It also requires synchronization of the distribution system metering hierarchy from an external system of record.

## 5.2. Outage Supervision

Outage Supervision plots outage or restoration events on a map.

Outage events are logged and displayed in summary and detail reports. Reason codes may be assigned.

Outage Statistics (SAIDI, SAIFI, CAIDI, CAIFI) are calculated for user-definable dates and may be filtered by reason code.

The optional Rules Editor can add the intelligent processing of outage notifications and initiation of appropriate actions.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.
- Integration to be performed with AMI Head End System (HES). AMI system to provide outage notifications delivered either within a periodic batch export of meter data or in near real-time from a last gasp communication from the meter, or both.
- Synchronization with CIS or other system of record for association of meters with locations and accounts, plus the status of the account (active/inactive).
- Map views require latitude/longitude information for each meter to be available via synchronization with the system or record for this information.

## 5.3. Rate & Revenue Analysis

The Rate & Revenue Analysis module enables a user to model billing rates and apply those rates to consumption profiles that have been imported from other systems. Rates may be applied over user-definable timeframes. This allows the user to compare multiple rates for a single consumption pattern.

The user may also use this module to pre-calculate and store pseudo bills by applying one or more rates to one or more consumption profiles for one or more definable time periods. Standard reporting provides comparisons of these calculated bills to assess the impact on utility revenue for different scenarios. Scenarios may include groups of customers switching from one rate to another; changing the parameters that constitute a rate, or introducing a new rate to a group of customers.

#### **Pre-Requisites & Assumptions**

- Deployment of the SmartWorks Framework, if not already in place.
- Integration with AMI Head End System (HES), which will deliver usage interval data.
- Alternatively, estimation can be deployed (additional scope to be agreed) to create pseudo interval data from periodic consumption information, such as daily or monthly reads. Where feasible, the pseudo interval data, which represents an estimated or assumed usage profile, is scaled to the actual usage volumes using the utility's register reads as "bookends" for scaling.
- Synchronization with CIS or other system of record for association of meters with locations and accounts, plus the status of the account (active/inactive).
- Configuration or import of rate structures to be analyzed.

## **5.4. KPI Dashboard**

The KPI Dashboard enables the user to configure one or more dashboards to display information on Key Performance Indicators (KPIs). A KPI is a metric that is represented by a single number.

For each KPI, a panel of information is available. This includes:

- Value of the KPI displayed as a numeric value, speedometer graphic or thermometer graphic. If a drilldown link was defined when the KPI was registered, clicking anywhere on the value will launch a window with the drilldown page.
- Value is color coded red/yellow/green depending on settings.
- Max/min statistics and trend area.
- Secondary KPI value, where configured. If the secondary KPI value has been defined with a drilldown link, clicking on the value will launch a window with the drilldown page.

Information on a KPI can be shared via email on a scheduled basis or threshold-driven exception basis.

A set of standard KPIs are made available with the application. These are arranged into a set of standard dashboards. It may be that not all dashboards or KPIs are applicable to a utility depending on available information, modules deployed and integrations performed. Users may configure their own dashboards from the available KPI's.

#### **Pre-Requisites & Assumptions**

- Deployment of the SmartWorks Framework, if not already in place.
- Population of any data required for calculation of KPIs.

### **5.5. Forecasting Module**

The Forecasting Module provides utilities with short, medium and long term consumption forecasts based on historical consumption, with weather normalization and adjustments for other factors. There are many uses for accurate consumption forecasts, including:

- Short term forecasting for price-driven or reliability-driven demand management
- Demand management candidate identification
- Distribution planning decision support
- Future estimated bills for key customers based on predicted usage and weather
- Decision support for utility budgeting
- Decision support for utility procurement or production

#### **Pre-Requisites & Assumptions**

- Deployment of the SmartWorks Framework, if not already in place.
- Forecasting requires the Weather Module.
- As with all functionality, please refer to the applicable Statement of Work for details on what, if any, configuration services are included.

### **5.6. Permalog Integration**

This module provides import and visualization of information from Permalog Leak Detection Sensors (LDS). The interface adapter imports one reading per day from each Permalog LDS and interprets the Permalog data readings, enabling users to:

- View the Leak Detection Sensors (LDS) on a map
- View a list of leak "events" recorded by the LDS
- View a graph of the Leak, Level and Spread for each LDS.

#### **Pre-Requisites & Assumptions**

- Deployment of the SmartWorks Framework, if not already in place.
- FCS Permalog Leak Detection Sensors deployed in the field.
- Leak Detection Sensors communicating over a Sensus Flexnet AMI network
- Flexnet RNI head end system configured to deliver the Permalog data to the SmartWorks Framework in the agreed format.
- Integration implemented between the SmartWorks Framework and Sensus FlexNet RNI.

## 5.7. Process Automation

The Process Automation module enables users to create, copy, configure, edit and maintain Rules to automate or streamline processes in the SmartWorks Rule Engine. The Rules Engine executes Rules that can be triggered based on an event or on a schedule. Rules are made up from Rule components that can be used to collect information from other systems, apply business logic to make decisions and execute actions such as communications, configurations or initiating processes in other systems.

The Process Automation module includes the Rules Editor and may be accompanied by one or more custom-configured rules and Rules Engine training. Refer to the Statement of Work for details.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.
- Integration must be performed to enable any proposed communications with third party systems.
- To enable optimum use of the solution and ensure value is delivered, appropriate training or workshop(s) should be arranged with Harris Utilities.

## 5.8. Task Manager

The Task Manager Module enables the utility to trigger, create, prioritize and track activities associated with operating or troubleshooting smart infrastructure assets, to ensure efficient response to potential issues.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.

## 5.9. Weather

The Weather module provides the import of weather data in the form of multiple variables, i.e. temperature, humidity, wind speed/direction, precipitation. Temperature is viewed as an overlay on consumption graphs. All populated weather variables are available to view or interrogate in tabular form.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.

## 5.10. AMI Routing Analysis

This module is intended as an extension to MeterSense MDM for use with RF mesh based AMI systems or other AMI systems that provide information on AMI communication routing or association of meters with collectors.

Depending on the information served up by the AMI head end system, this module enables users to view reports on collector loading, association of meters to collectors and meter communications routing, including meter dependencies.

Routing and collector associations are shown in map views.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.
- Deployment of MeterSense MDM to provide basic information on AMI system health.
- AMI system must provide SmartWorks with a daily extract file containing the most recent meter routing information.

## 5.11. Direct C&I Meter Reading

This module provides the capability to collect data directly from ANSI compliant meters that are accessible over the internet. Unlike the typical approach whereby MeterSense is configured to import data from an AMI Head End System, this module enables communication directly with the meter.

### Pre-Requisites & Assumptions

- Deployment of the SmartWorks Framework, if not already in place.
- Meters must be IP-addressable from the framework server with all required network connectivity.
- Meters must support the ANSI C12.18 and C12.19 data and communication standards.
- IP addresses and passwords for all meters must be entered into the framework or available for data synchronization from an external system of record.

**Schedule "B"**

**License Fees and Payment Schedule**

*License Fees MeterSense: \$210,000*

*Site license for up to 160,000 gas meters, and 5,000 water meters.*

<b>Payment Milestone</b>	<b>Percent</b>	<b>Amount</b>
Contract Signing	25%	\$52,500
Software Installation on CLB Designated Servers	55%	\$115,500
Software Functional Acceptance/Certification	20%	\$42,000
<b>Total</b>	<b>100%</b>	<b>\$210,000</b>

*License Fees CustomerConnect: \$77,000*

*Site license for up to 160,000 gas meters, and 5,000 water meters.*

<b>Payment Milestone</b>	<b>Percent</b>	<b>Amount</b>
Contract Signing	25%	\$19,250
Software Installation on CLB Designated Servers	55%	\$42,350
Software Functional Acceptance/Certification	20%	\$15,400
<b>Total</b>	<b>100%</b>	<b>\$77,000</b>

Licenses are a one-time charge site license for use of the software for up to 160,000 gas meters, and 5,000 water meters.

**Schedule "C"**  
**Third Party Software Licenses and Third Party Software Terms**

**CUSTOMER AND HOME CONNECT ADDENDUM**

This Customer and Home Connect Addendum (the "Addendum") is hereby attached to and forms part of the Software License Agreement (the "Agreement") between N. Harris Computer Corporation ("Consultant") and ("Customer") on the following terms and conditions:

**OVERVIEW: This Addendum governs the Customer's use of the Customer and Home Connect module (the "Software Product"). The Software Product which is the subject of this Addendum is further described in Schedule A, attached hereto.**

1. **Parent License.** Harris holds a license to the Software Product from Bit Stew Systems Inc. ("Bit Stew"), and any right or license to the Software Product contained herein is at all times subject to that license with Bit Stew.
2. **Grant of Customer and Home Connect License.** Subject to all other terms and conditions of the Agreement and this Addendum, Consultant hereby grants, and the Customer accepts, a non-exclusive, non-transferable, enterprise-wide, royalty-free, perpetual license (collectively, the **Customer and Home Connect License**) to use, copy and install one instance of the Software Product at any location or facility owned or operated by the Customer (the "**Permitted Locations**") for the purpose of providing the Customer's end customer utility users with personalized information relating to their energy usage (the "**Purpose**").
3. **Grant of Documentation License.** Subject to all other terms and conditions of the Agreement, and this Addendum, Consultant hereby grants, and the Customer accepts, a non-exclusive, non-transferable, enterprise-wide, royalty-free, perpetual license to use, copy, reproduce, update, adapt and display the support materials provided by Consultant from time to time, including user manuals or online tutorial materials (the "**Documentation**" and together with the Software Product, the "**Licensed Materials**") for the Purpose and to train its information technology personnel, service technicians, end users and trainers in the operation of the Software Product.
4. **License, Not Sale.** The parties acknowledge and agree that nothing in this Addendum constitutes a sale of the Licensed Materials, and further that this Addendum does not convey to the Customer, or to any affiliate or third party, any ownership right, interest or title (including any intellectual property rights in or to the Licensed Materials, and that it will not obtain any rights to the Licensed Materials other than those expressly set out in this Addendum. All right, title and interest (including all Intellectual Property Rights) in and to the Software Product and all enhancements and upgrades therein and thereto is and will at all times be fully vested in Bit Stew and its licensors, including Harris.
5. **Limitations of Customer and Home Connect License.** The Customer acknowledges and agrees its license to, and accordingly its use of, the Licensed Materials is always subject to the following limitations:



(a) The Customer will not directly or indirectly use the Software Product for any purpose other than the Purpose, nor will the Customer install the Software Product at any location other than a Permitted Location.

(b) **No Modification or Reverse Engineering**—The Customer will not directly or indirectly modify or in any way alter (excluding configuration expressly permitted by the Documentation) the whole or any part the Software Product, nor will the Customer translate, decompile, disassemble, reconstruct, decrypt, reverse assemble, reverse engineer or make derivative works based on the whole or any part of the Software Product.

(c) **No Rental or Timeshare Use**—Except as permitted herein, the Customer will not directly or indirectly license, sublicense, sell, resell, transfer, assign, distribute, rent, lease, or otherwise commercially exploit the Software Product in any way except as permitted by the Customer and Home Connect License, nor will the Customer use of the Software Product in a computer service business, service bureau, hosting or timesharing arrangement.

(d) **Proprietary Notices**—The Customer will not directly or indirectly remove any proprietary notices, labels or marks from the Licensed Materials, including those indicating the intellectual property rights of Consultant, Bit Stew or any third party.

(e) **Copies**—In addition to installations of the Software at Permitted Locations as permitted by the Customer and Home Connect License, the Customer may make only one copy of the Software Product for archival and backup purposes, such copy to be executed only if the operating copy of the Software Product, or any physical media onto which the Software Product was delivered, becomes unusable. In addition, the Customer may make and place one further copy of the Software Product on a computer for teaching and development purposes. For greater certainty, nothing in this provision prevents copying that naturally results from the execution of the Software Product or from the regular back-up of the computer systems onto which the Software Product is installed.

(f) **Security**—The Customer will store the physical media on which the Software Product is delivered or onto which archival copies of the Software Product are permitted above in a locked, secure location, and will only permit access thereto to those of its employees, contractors and other personnel who have been made aware of these limitations.

6. **Term.** The Customer and Home Connect License granted herein commences on the date of this Addendum and is of indefinite duration unless terminated pursuant to the terms hereof.

7. **Termination of Parent License.** If Harris's license to the Software, including any enhancements or upgrades, is at any time or for any reason terminated, this Addendum, insofar as it relates to the license of the Software Product, enhancements or upgrades which were the subject of license between Bit Stew and Consultant, will thereby automatically be deemed to be assigned from Harris to Bit Stew, and the Customer hereby consents to such assignment.

8. **Feedback.** From time to time, the Customer may provide Consultant with feedback, comments, suggestions and impressions with respect to the Licensed Materials (collectively, the "Feedback"). To the extent that such Feedback does not contain Confidential Information, the Customer acknowledges and agrees that Consultant and Bit Stew may use, without compensation to the Customer, such Feedback for its internal testing and development purposes and for the purposes of providing releases of the Licensed Materials to the Customer, to its other customers or to the public in general.

9. **Right of Audit.** At Harris's request, throughout the term of this Addendum and for three years after the expiration or termination of this Addendum, but not more than once each year and upon reasonable notice, the Customer will permit Consultant or its representatives to perform a physical audit of those of the Customer's records which are relevant to the Customer's, Customer's Affiliates' and Users' use of the Software Product, and including without limitation any sublicense agreements, invoices, or accounts receivable with respect to the Software Product, including any enhancements or upgrades, in order to confirm the Customer's compliance with this Addendum. The Customer agrees to cooperate with Harris to enable Harris to do so.

10. **Indemnity.** Indemnity. Customer will indemnify and hold harmless Bit Stew and Bit Stew Affiliates, and their respective officers, employees and agents (collectively, "**Indemnified Persons**"), from and against any and all Claims brought or made against, or incurred by, the Indemnified Persons, or any one of them, arising out of a claim by a third party that the Customer's intellectual property, or the Customer's specific use of the Software Product (as opposed to the Software Product itself or the technology on which it is based), infringes the intellectual property rights of a third party or otherwise breaches any Applicable Law.