

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement is entered into on January 27, 2024 (the “**Effective Date**”) by and between **City of Clearwater** (“**Organization**”) and **N. Harris Computer Corporation** (“**Harris**”), having the respective principal places of business provided herein.

**WHEREAS**, Harris provides the Harris Offerings and related services to Organization pursuant to the Software License Agreement executed by the parties on February 21, 2020 (the “**SLA**”);

**AND WHEREAS**, Organization wishes to retain Harris to perform certain professional services from time to time in respect of the SLA;

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

### ARTICLE I INTERPRETATION

#### 1.1 Definitions

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

- (a) “**Affiliates**” has the meaning given to it by the SLA.
- (b) “**Agreement**” and similar expressions mean this Professional Services Agreement, including all of its Schedules and all instruments supplementing, amending or confirming this Agreement. All references to “**Articles**” or “**Sections**” mean and refer to the specified Article or Section of this Agreement except where a different agreement is explicitly identified.
- (c) “**Change Order**” means any written documentation between the Organization and Harris evidencing their agreement to change particular aspects of this Agreement or of a Statement of Work.
- (d) “**Completion of Professional Services**” means that the Professional Services are complete in accordance with the specifications set out in a Statement of Work.
- (e) “**Harris Offerings**” means the Harris software products provided to Organization pursuant to the SLA, whether through perpetual license or by subscription.
- (f) “**Professional Services**” means the professional services provided by Harris pursuant to a Statement of Work.
- (g) “**Project Manager(s)**” means a party’s project manager assigned to manage the delivery and implementation of Professional Services under a particular Statement of Work.
- (h) “**Project Schedule**” - means the project schedule set out in a Statement of Work that sets details all necessary activities, milestones, projected completion dates for such milestones and each party’s responsibilities to achieve Completion of the Professional Services.
- (i) “**Required Programs**” has the meaning set out in Section 2.3(b) hereof.

- (j) **“Statement of Work”** means a statement of work agreed to by the parties pursuant to this Agreement which describes the scope of work and delineating, among other things, the Professional Services that will be provided by Harris to Organization pursuant to this Agreement. Each Statement of Work shall be attached as Schedule A to this Agreement, numbered consecutively, beginning with A-1.

Capitalized terms not defined in this Agreement shall have the meaning attributed to them in the SLA. Any discrepancy between a defined term in this Agreement and one in the SLA shall be resolved in favour of the definition in this Agreement, to the extent that there is an inconsistency.

## **1.2 Schedules**

The following schedules are appended to and deemed to be integral parts of this Agreement.

Schedule A	-	Statement of Work
Schedule B	-	Sample Form of Change Order

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

## **ARTICLE II PROFESSIONAL SERVICES**

### **2.1 Professional Services**

In order to achieve the Completion of Professional Services, Harris agrees, subject to the terms and conditions of this Agreement, to perform the Professional Services set out in a Statement of Work, which may include, but are not limited to the following:

- (a) Oversee and implement the Harris Offerings described in a Statement of Work.
- (b) Perform necessary set up and configuration operations.
- (c) Provide training of various technical, administrative, operational and testing activities required to implement and support the software.
- (d) The Statement of Work describes in greater detail the Professional Services, the method by which the Professional Services shall be performed and other obligations of each party. To the extent that the Statement of Work more explicitly details the Professional Services or the obligations of a party, then those details shall prevail over any other document that is less explicit. Any warranties or representations on the part of Harris in the Statement of Work are not binding on Harris and are merely provided for information purposes; the only warranties and representations provided by Harris in respect of the Professional Services and this Agreement are found in Article III .

### **2.2 Performance by Harris**

- (a) 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.
- (b) Harris' Discretion -- 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 the Organization personnel. Harris will communicate openly with the Organization on its methodology, manner and means.

- (c) Conduct on Organization's Premises -- The Professional Services may be performed on the premises of Organization, and Organization shall fully cooperate in facilitating such performance of the Professional Services. Harris agrees, while working on the Organization's premises, to observe the Organization's rules and policies relating to the security thereof, access to or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information. Harris agrees that when it is working on the Organization's premises, its personnel shall observe the Organization's administrative and ethics codes relating to the security, access or use of all or part of the Organization's premises and any of the Organization's property, including proprietary or confidential information.
- (d) Inquiries by Organization -- Harris shall respond expeditiously to any inquiries pertaining to this Agreement from the Organization.
- (e) Independence -- As an independent consultant, Organization retains Harris on an independent contractor basis and not as an employee.
- (f) Coordination of Services -- Harris agrees to work closely with Organization's staff in the performance of Professional Services and shall be available to Organization's staff, and consultants at such reasonable times as may be set out in a Statement of Work, failing which, Harris shall be available between 8 am and 5 pm Eastern Standard Time or Eastern Daylight Time, as applicable.
- (g) Maintenance and Inspection -- Harris shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement during the Term and for a period of five (5) years from the date of final payment under this Agreement. All such records shall be clearly identifiable. Harris shall, no more than once in a calendar year during regular business hours, allow during normal business hours and with adequate notice, to examine, audit, of such records, pursuant to this Agreement. Unless Harris is required to maintain such records pursuant to any law or regulation for a further period of time, after which Harris shall be permitted to destroy all such information.

## 2.3 Performance by Organization

- (a) Co-operation by Organization -- The Organization acknowledges that the success and timeliness of performing the Professional Services, which include the implementation and configuration processes, shall require the active participation and collaboration of the Organization and its staff and agrees to act reasonably and co-operate fully with Harris to achieve the Completion of Professional Services.
- (b) Required Programs -- The Organization acknowledges that delivery of the Professional Services may require that the Organization obtain and install required software programs to achieve remote access (the "**Required Programs**"), as detailed in a Statement of Work, and the Organization agrees that the acquisition of the Required Programs shall be at its sole cost and in addition to the Professional Services fees. The Organization further acknowledges that the Professional Services require that the Organization's hardware 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 Completion of Professional Services. If the Organization has not properly installed the Required Programs on hardware of sufficient quality, condition and repair, Harris shall have the right to suspend the Professional Services and the related Project Schedule until these issues have been dealt with by Organization sufficiently and to Harris' reasonable satisfaction.

- (c) Project Manager -- The Organization shall ensure that its Project Manager shall work closely with Harris to facilitate the successful completion of the Professional Services, including the implementation and configuration process for any particular Statement of Work. The Organization shall further ensure that its Project Manager shall be responsible for supervising the staff of the Organization and ensure their co-operation with and participation in the delivery of the Professional Services. The Project Manager's duties shall be delineated in the Statement of Work.
- (d) Additional Organization Obligations
- (i) Organization shall notify Harris of suspected defects in the Professional Services. Organization shall provide, upon Harris' request, additional data deemed necessary or desirable by Harris to reproduce the environment in which such defect occurred.
  - (ii) Organization shall allow the use of online diagnostics, if required by Harris during problem diagnosis. Organization shall cooperate in scheduling remote desktop services for diagnostic purposes.
  - (iii) Organization shall ensure that its personnel involved in the Professional Services are educated and trained in the proper use of the Harris Offerings in accordance with applicable Documentation (as that term is defined by the SLA). If Organization's personnel are not properly trained as required by the applicable Statement of Work, Organization agrees that such personnel will be trained by Harris or Organization within fifteen (15) days of such determination. If Organization desires Harris to perform the required training, then the parties shall execute a Change Order to reflect such required additional training and/or additional required time extensions.
  - (iv) Organization shall provide Harris with access to qualified functional or technical personnel to aid in diagnosis and to assist in repair in the event of error, defect or malfunction.
  - (v) Organization shall follow the acceptance of deliverables procedures set out in a Statement of Work. Completion of Services is deemed to occur in accordance with such Statement of Work.
  - (vi) Organization shall have the sole responsibility for:
    - (A) the performance of any tests it deems necessary prior to the use of the Harris Offerings.
    - (B) assuring proper installation, configuration, verification, audit controls and operating methods for its computer systems; and
    - (C) implementing proper procedures to assure security and accuracy of input and output and restart and recovery in the event of malfunction.

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

#### **3.1 Warranty**

Harris warrants that the Professional Services will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks.

Harris shall have no liability hereunder if the Organization has modified or interfered with the Professional Services in any manner without the prior written consent of Harris.

### **3.2            No Other Warranties**

TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 3.1, THE PROFESSIONAL SERVICES ARE PROVIDED TO THE ORGANIZATION "AS IS" AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE PROFESSIONAL SERVICES, SOFTWARE AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABLE QUALITY, MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

HARRIS DOES NOT REPRESENT OR WARRANT THAT THE PROFESSIONAL SERVICES SHALL MEET ANY OR ALL OF THE ORGANIZATION'S PARTICULAR REQUIREMENTS, OR THAT ALL ERRORS OR DEFECTS IN PROFESSIONAL SERVICES CAN BE FOUND OR CORRECTED.

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

## **ARTICLE IV FEES AND PAYMENTS**

### **4.1            Fees and Payments**

- (a) The Organization agrees to pay Harris the Professional Services fees set out in the applicable Statement of Work, which details the associated fee structure and payment schedule. The fees set out in a Statement of Work are exclusive of taxes. Organization agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property, sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Harris' net income). The Organization agrees to reimburse Harris for direct expenses incurred in providing the Services, including but not limited to travel, lodging, meals, and other out of pocket expenses as set out in the applicable Statement of Work.
- (b) During the term of this Agreement, Harris shall, from time to time, deliver invoices to Organization. Each invoice delivered to Organization by Harris shall be due and payable within thirty (30) days of receipt thereof by Organization.
- (c) In addition to all other available remedies, Harris may suspend or terminate the Professional Services if Organization fails to pay any portion of an invoice on or before sixty (60) days after the date it becomes due, provided the invoices are not in dispute by Organization. Suspension or termination of any Professional Services shall not relieve the Organization of its obligation to pay its outstanding invoices, including any applicable late charges.
- (d) Harris shall be responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations. Any tax Harris may be required to collect or pay upon the delivery of the Professional Services described in this Agreement shall be paid by Organization and are excluded from the prices listed in the applicable Statement

of Work and such sums (including the payment of the taxes) shall be due and payable to Harris within thirty (30) days of receipt of an invoice therefore. Any taxes levied after delivery of the Professional Services described in this Agreement shall be paid by Organization. For the sake of clarity, all of the fees listed in this Agreement are exclusive of any applicable taxes. Organization shall be responsible for the payment of any applicable duties, and sales/consumption taxes. Organization warrants that there are no additional county/city/municipal style taxes that apply to any of the Professional Services or that are in relation to income taxes payable by Harris's employees.

- (e) Any fees based on a fixed price arrangement are provided based on Harris' fees as applicable at the time the parties negotiate a particular Statement of Work. Any delays that result from Organization's actions, inaction, or requests for modifications (whether incorporated into a Change Order or not) will affect the basis on which Harris provided the fixed price; and as such, Harris reserves the right to charge for additional time and expenses where the duration of the Statement of Work is extended as a result of Organization's actions, inaction, or requests for modifications.

#### **4.2 Change Orders**

With respect to any proposed changes to the Professional Services defined by this Agreement that do not materially impact the scope of either party's work effort required under this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change that, in the reasonable opinion of the other party, materially impacts the scope of the parties' work effort required under this Agreement, such as, but not limited to, changes in the allocation of the resources of the Organization and/or of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require a party to provide additional work hours, the other party may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will be timely considered and will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing, the performance of the Professional Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute. A sample change order is presented in Schedule B.

### **ARTICLE V LIABILITY AND REMEDIES**

#### **5.1 Liability**

- (a) Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris' liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.
  - (i) BOTH PARTIES AGREE THAT TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF HARRIS, ITS AFFILIATES, ITS SERVICE PROVIDERS AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS AND ORGANIZATION'S EXCLUSIVE REMEDY WITH RESPECT TO 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 CAUSE OF ACTION, SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID BY ORGANIZATION TO HARRIS PURSUANT TO THE STATEMENT OF WORK GIVING RISE TO LIABILITY.

- (ii) IN ADDITION TO THE FOREGOING, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL HARRIS, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS BE LIABLE TO ORGANIZATION FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, OR AGGRAVATED DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, COSTS OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, OR LOSS OF BUSINESS OPPORTUNITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.
- (iii) CLAUSES (i) AND (ii) SHALL APPLY IN RESPECT OF ANY CLAIM, DEMAND, ACTION, OR PROCEEDING HOWSOEVER ARISING BY A PARTY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM, DEMAND, ACTION, OR PROCEEDING INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, RESCISSION OF CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY, EVEN IF HARRIS HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES OR SUCH LOSS OR DAMAGE IS FORSEEABLE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- (iv) FOR THE PURPOSES OF THIS SECTION 5.1, REFERENCES TO HARRIS INCLUDE ITS AFFILIATES.

## **5.2        Allocation of Risk**

The parties agree that the limited warranties, disclaimers and limitation of liability as set out in in this Agreement are fundamental elements of the basis of bargain between Harris and Organization and set forth an allocation of risk reflected in the fees and payments hereunder.

## **5.3        Remedies**

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

# **ARTICLE VI GENERAL**

## **6.1        Force Majeure**

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, pandemic, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the Organization's computing infrastructure (unless by reason of the

negligence of a party to this Agreement), or failure or inoperability of Third-Party Products or services or any software other than Harris' proprietary software components of the Harris Offerings. Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

## **6.2 Confidentiality**

- (a) Duty Owed to the Organization -- Harris acknowledges that it may receive information from the Organization or otherwise in connection with this Agreement or the performance of the Professional Services. 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 exercising its rights or performing its obligations under this Agreement;
  - (iii) not to disclose or release such information except on a need-to-know only basis for the purposes of performing the Professional Services;
  - (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, or where may be required by applicable law or court order; and
  - (v) to take all appropriate action, 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 Professional Services during or after the term of this Agreement, any material or information, including the information, without first obtaining the written consent of the Organization.

## **6.3 Cancellation, Term and Termination**

- (a) Cancellation of any on-site Professional Services by Organization is allowed for any reason if done in writing more than thirty (30) days in advance of such Professional Services. Organization will be billed for any non-recoverable direct costs incurred by Harris that result from a cancellation by Organization within thirty (30) days or less of scheduled on-site Professional Services. Additionally, Organization hereby acknowledges that cancellation of on-site Professional Services means that such on-site Professional Services will be rescheduled as Harris' then current schedule permits. Harris is not responsible for any delay in Organization's project resulting from Organization's cancellation of Professional Services. If upon Harris' arrival, the Organization is not adequately prepared or has not completed the assigned tasks for such visit by Harris, then the Project Managers will assess the associated impact on the Project Schedule and further determine if any Professional Services (other than those scheduled) may be accomplished. If an adjustment to the Project Schedule is required and/or additional Professional Services are required because the Organization was not adequately prepared, Harris will provide a Change Order to the Organization for the additional Professional Services.
- (b) This Agreement shall commence on the Effective Date and shall terminate on ninety (90) days' written notice by either party, provided however, that if there remains a Statement of Work after such notice of termination, then this Agreement shall be extended until the Completion of Services applicable to such Statement of Work. For clarity, this Agreement shall terminate on the Completion of Services applicable to the last Statement of Work agreed to by the parties.



- (c) If the parties do not terminate this Agreement by written notice as contemplated by Section 6.3(b), then this Agreement shall expire on expiry of the Term of the SLA, or as otherwise agreed by the parties.
- (d) If Harris should neglect to perform the Professional Services properly or otherwise fail to comply with the requirements of this Agreement, the Organization must notify Harris in writing of such default (a "**Default Notice**"). Upon receipt of a Default Notice, Harris must either correct the default at no additional cost to the Organization, 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 Harris fails to correct the default, or issue a notice disputing the alleged default, in either case within one hundred and twenty (120) days following receipt of the Default Notice, the Organization may terminate the whole of this Agreement and/or the applicable Statement of Work and in such case the Organization will be responsible for payment to Harris of only that part of the fee earned by Harris for those Professional Services performed up to the time of communication of such notice of termination to Harris.
- (e) If the Organization should fail to comply with its obligations under this Agreement, Harris must notify the Organization in writing of such default (a "**Default Notice**"). Upon receipt of a Default Notice, the Organization must correct the default at no additional cost to Harris, 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 Organization 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, Harris may terminate the whole of this Agreement and/or the applicable Statement of Work, in which case the Organization will be responsible for payment to Harris of only that part of the fee earned by Harris for that part of the Professional Services performed in accordance with the Statement of Work up to the time of communication of such notice of termination to the Organization.
- (f) If Organization has failed to pay the fees or other amounts due in accordance with Article 4.1, then Harris shall have the right to terminate this Agreement effective immediately upon written notice to Organization to that effect.
- (g) Notwithstanding any other provision of this Agreement, if the Organization breaches (i) any intellectual property right of Harris; or (ii) its confidentiality obligations under Section 6.2, then Harris shall have the right to terminate this Agreement effective immediately upon written notice to Organization to that effect.
- (h) 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 favourably 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.

#### **6.4            Mediation**

The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is 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. The costs and expenses of mediation, including compensation and expenses of the mediator

(and except for the attorneys' fees incurred by either party), are to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within one hundred and twenty (120) days after the date either party provides the other with the 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.

#### **6.5 Addresses for Notice**

Any notice required or permitted to be given to any party to this Agreement shall be given in writing and shall be delivered personally, 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**

With a copy to:

[legal@harriscomputer.com](mailto:legal@harriscomputer.com)

and in the case of the Organization, to:

**CITY OF CLEARWATER**  
**P.O. Box 4748**  
**Clearwater, FL 33758**  
**Attention: IT Director**  
**Telephone: 727-444-7654**

**With a copy to:**  
**HelpDesk@myclearwater.com**

Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 6.5.

#### **6.6 Assignment**

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

#### **6.7 Reorganizations**

The Organization acknowledges that any reorganization of Organization may result in a change in the fees set out in a statement of work.

**6.8                    Entire Agreement**

This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter. No other understandings, agreements, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of Harris by any of its employees or agents, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Each Party acknowledges that it is entering into this Agreement solely on the basis of the representations contained herein. The terms of this Agreement may not be changed except by an amendment signed by an authorized representative of each party. No provisions in any purchase orders, or in any other documentation employed by or on behalf of the Organization in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by Harris, with such provisions being deemed deleted.

**6.9                    Section Headings**

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

**6.10                  Governing Law**

This Agreement shall be governed by the federal and state laws of Florida and venue shall occur in Pinellas County Florida.

**6.11                  Trial by Jury**

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

**6.12                  Invalidity**

The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be 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.

**6.13                  Waiver**

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

**6.14                  Counterparts**

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

**6.15                  Survival**

Section 3.2, Section 4.1 and Articles V and VI shall survive the termination and/or expiration of this Agreement.

**6.16            Further Assurances**

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

**6.17            Currency**

All amounts specified in this Agreement shall be in United States currency.

**6.18            Relationship**

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

**6.19            Equitable Relief**

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

**6.20            Language**

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

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

**N. HARRIS COMPUTER CORPORATION**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Countersigned:

CITY OF CLEARWATER, FLORIDA

\_\_\_\_\_

Bruce Rector

Mayor

By: \_\_\_\_\_

Jennifer Poirrier

City Manager

Approved as to form:

Attest:

\_\_\_\_\_

Assistant City Attorney

\_\_\_\_\_

Rosemarie Call

City Clerk

**Schedule A**  
**Sample Form of Change Order**

[Client Logo]



Ref	Description	Hours
Total Hours		

#### Project Impact

[Complete the following table with a description of the impact to each area, add and remove areas as needed]

Budget	
Resources	
Payment Milestones	
Schedule	
Risk	

Attachments: ☐

#### Approval

Chargeable Hours	Rate	Amount
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Non-Chargeable Hours	Total Hours
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Client Signature	Date
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Client Name	
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Cayenta Signature	Date
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Cayenta Name	
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