PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "**Agreement**") constitutes the contract by and between N. Harris Computer Corporation, a corporation existing under the laws of Ontario ("i2") and the person or entity identified on the Quote as the licensee of the Software ("Customer"), is made and entered into as of the Start Date listed in the Quote.

WHEREAS:

(a) Customer has either previously or is concurrently licensed the right to use the i2 software product ("**i2 Software**") from i2;

(b) Customer wishes to obtain certain professional services from i2 related to i2 Software; and

(c) i2 has agreed to provide such services as described herein and in the related Quote ("**Quote**") on the terms and conditions set out in this Agreement.

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

A. SCOPE OF SERVICES

1. i2 will provide the services to Customer as detailed in the Quote (the "**Services**"). i2 will provide these Services for the fees and expenses set forth in Section B and Exhibit A of this Agreement and as further detailed in a Quote.

2. Customer acknowledges that the performance of the Services are based on i2's standard methodology.

3. If requested by i2, Customer shall provide i2 with workspace and facilities, administrative and technical support and such additional cooperation as is determined by i2 as necessary to perform its obligations under this Agreement, including but not limited to **(a)** policies and procedures, and **(b)** access to information systems and by providing individuals with knowledge of the Customer's systems, including via remote or in person connectivity.

4. i2 anticipates that the Services will be completed by the End Date; any delays on the part of the Customer will require an amendment to this Agreement extending the End Date which may result in additional fees as determined by i2.

5. Where the Customer has purchased Pre Paid Hours as stipulated in a Quote, the following provisions apply:

- Any unused Pre Paid Hours expire as of the End Date;
- No more than 40 Pre Paid Hours can be consumed in any thirty day period;
- Any derivation of these usage provisions will require the prior consent of i2.

B. PAYMENT

1. Where applicable as stipulated in the Quote, Customer agrees to pay to i2 the fees for the Services at the rates and on the payment terms specified in the Quote and as invoiced for reimbursements as permitted under Exhibit A (the Travel Policy). Otherwise, i2 will invoice for all Services monthly.

2. Any invoice not paid by the due date (which is thirty (30) days after the date of the invoice unless the Quote states otherwise) will be deemed late, and will accrue late charges as of the due date. Late charges are calculated at the rate of one and one half percent (1.5%) per month (eighteen percent (18%) per year), not to exceed the highest rate permitted by law. Customer agrees that such late charges are reasonable under these circumstances and agrees to pay all such late charges.

3. In the event that Customer's reasonable employee policies and procedures require health screenings, physicals, drug tests, background tests or any of the like, it shall be at the sole expense of Customer and the sole responsibility of

Customer to promptly facilitate any such testing including providing proper paperwork. The provision of this Section B.3 shall in no way be deemed to alter the parties understanding under Section H.3 Independent Contractor Status.

C. CONFIDENTIAL INFORMATION

1. "**Confidential Information**" means all information or material belonging to a party that such party treats as confidential and any information relating to third parties that a party has an obligation to treat as confidential, which is disclosed by or obtained by a party in connection with this Agreement, whether such information is in oral, written or electronic form, and which includes all materials that are (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 manner in which the Services are provided 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 that: **(a)** is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to disclosure; **(c)** is lawfully disclosed to the other party by a third party without restriction on disclosure; or **(d)** is independently developed by the other party.

2. Each party agrees to use its best efforts to hold the other party's Confidential Information in the strictest confidence and expressly covenants not to use or disclose, directly or indirectly, such Confidential Information during or after the term of this Agreement without the express written consent of the party to whom the Confidential Information belongs.

3. Personally Identifiable Information. In the event i2 is to receive or be exposed to any personally identifiable information, i2 and the Customer shall comply with the provisions of the terms set out in applicable Data Processing Addendum as set out in the i2 online legal portal at https://i2group.com/legal. The Customer represents and warrants that it has obtained all necessary consents and the Customer has the right to provide to i2 or permit all such personally identifiable information to be accessible by i2 in the performance of the Services under this Agreement.

D. TERM AND TERMINATION

1. This Agreement shall commence on the Start Date listed in the Quote and shall continue until the End Date. This Agreement does not automatically renew but terminates on the End Date in the Quote unless terminated by either party by providing notice prior to the End Date as permitted under this Agreement.

2. A party may terminate this Agreement by providing the breaching party with prior written notice in the event the breaching party fails to keep, observe or perform any material obligation of this Agreement, including non-payment. The breaching party shall be provided with a reasonably sufficient description of such breach and a cure period as follows;
   (a) If the material breach is a failure to pay an amount due and payable under this Agreement, the cure period after prior written notice shall be ten (10) days.
   (b) For all other material breaches, the cure period shall be forty-five (45) days.
In relation to non-payment under section D.2.(a) above, the Agreement shall automatically expire at the end of the tenth day.

3. In the event of termination or expiration of this Agreement, Customer agrees to pay all amounts due and payable to i2, including but not limited to time, materials and expenses incurred in the performance of Services up to the effective date of termination at i2's rates as stipulated in either the Quote or as otherwise provided to the Customer.

4. Upon the effective date of termination – which includes expiration of the Agreement as of the End Date – i2 shall have no further obligations under this Agreement. The terms of this Agreement shall continue to govern fees due and payable to i2 by Customer after the effective date of termination of this Agreement but incurred by i2 prior to the effective date of termination.

5. Any End Date may be extended by the parties by an agreement in writing specifically amending this Agreement or by reissuing a new Quote.

E. NON-SOLICITATION OF EMPLOYEES

1. Customer acknowledges and agrees that i2 has invested substantial time and effort in assembling and training its personnel. In addition, as a result of employment by i2, such personnel have gained knowledge of the business affairs and operations of i2, which Customer agrees is Confidential Information of i2. Accordingly, during the term of this Agreement and for a period of one (1) year thereafter, Customer will not directly or indirectly solicit for hire or otherwise offer positions of employment to, or in any manner financially engage any i2 employee who provided Services or was otherwise introduced to the Customer during the term of this Agreement.

2. In the event Customer directly or indirectly solicits for hire any i2 employee or otherwise offers a position of employment to, or otherwise financially engages any i2 employee during the term of this Agreement or for one (1) year thereafter, Customer will pay i2 a sum equal to fifty percent (50%) of the most recent annual employment cost for that employee. Such sum will be due and payable upon hiring of the employee. For purposes of this Agreement, annual employment cost means the aggregate of the employee's base salary.

3. This Section E shall not apply to employees who reply solely to a general solicitation for employment.

F. WARRANTY

1. i2 warrants that the Services provided hereunder will conform to industry accepted professional standards of quality and which will be performed in a professional manner.

2. **THE FOREGOING EXPRESS WARRANTY CONSTITUTES THE ONLY WARRANTY PROVIDED BY HARRIS. HARRIS MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE OR OTHERWISE WITH REGARD TO ANY SERVICES PROVIDED. HARRIS DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**.

G. LIMITATION OF LIABILITY

1. TO THE GREATEST EXTENT PERMITTED BY APPLIABLE LAW, HARRIS'S TOTAL LIABILITY TO CUSTOMER FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO HARRIS UNDER THIS AGREEMENT PURSUANT TO THE APPLICABLE QUOTE.

2. IN NO EVENT SHALL HARRIS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, SPECIAL OR EXEMPLARY DAMAGES OR EXPENSES – INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS, AND SAVINGS – PURSUANT TO THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES.

3. I2 ASSUMES NO RESPONSIBILITY FOR ANY OVERPAYMENT, LOSS, OR LIABILITY THAT RESULTS DIRECTLY OR INDIRECTLY FROM INACCURATE INFORMATION, INCORRECTLY CODED MATERIAL, INCORRECTLY DATED MATERIAL, INSUFFICIENT AUTHORIZATIONS, FAULTY DOCUMENTATION PROVIDED TO HARRIS.

4. Notwithstanding any other provision of this Agreement, Customer agrees that Customer is solely responsible for independently determining that all actions taken by Customer are consistent with applicable laws and ethical standards governing Customer. In no event shall i2 be liable in whole or in part, either directly or indirectly for Customers' violations of laws.

5. For any interfaces or connectors that i2 provides as part of the Services, those interfaces and connectors will be subject to and are for all intents and purposes Software under the i2 License Agreement.

H. GENERAL PROVISIONS

1. Intellectual Property

i2 retains ownership and title to all intellectual property rights in all tools, software, methodology, techniques, and practices developed prior to or during the term of this Agreement including in anything requested by the Customer to be developed by, created by, or procured by i2; the Customer continues to retain all ownership and title to all data that was in the Customer's possession prior to the term of this Agreement and for the results of any processed data in accordance with the terms of this Agreement.

2. Record Retention

To the extent required by applicable laws and regulations, each party agrees to keep and maintain for all applicable periods, all documents, books, data, and other records as are necessary to evidence the services provided under this Agreement.

3. Independent Contractor Status

i2 shall be an independent contractor for the purposes of providing services under this Agreement. Nothing herein shall be deemed or construed as creating a joint venture, partnership, agency, employee/employer relationship, or any other similar enterprise between i2 and Customer for any purpose, including but not limited to taxes or employee benefits.

4. Assignment

Customer shall not assign any of its rights or duties under this Agreement, either directly or indirectly, without the prior written consent of i2.

5. Costs and Expenses of Litigation

In the event that either party initiates legal proceedings regarding any provision or enforcement of this Agreement, the prevailing party shall be entitled to an award of all reasonable costs and expenses, including reasonable attorneys' fees.

6. Severability

If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such term or provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable, if such provision may not be so saved it shall be severed and the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.

7. Force Majeure

In the event that either party is prevented from performing, or is unable to perform any of its obligations under this Agreement due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance shall be extended for the period of delay or inability to perform due to such occurrence.

8. Notices

(a) All notices, demands, and requests, required to be given under this Agreement by either party to the other shall be in writing and delivered by hand, or by registered or certified mail, postage prepaid, to the respective parties at the following addresses, or to such other address as may be given by a party to the other pursuant hereto:

> **HARRIS:** N. Harris Computer Corporation
> 2429 Military Road Suite 300
> Niagara Falls, NY 14304
> Attn: Legal Dept.

> **CUSTOMER:** As Per Quote

(b) Notice shall be deemed to have been given upon receipt thereof as to communications that are delivered by hand, or by registered or certified mail, and as to communications made by United States mail, on the third (3rd) day after mailing; notice via email is sufficient if the email is sent to two individuals of the affected party as provided for herein.

9. Governing Law

This Agreement shall be governed by, construed and interpreted in accordance with the laws of the province, state, or country, as applicable, in which the Customer is provided the Services (the "Customer Territory"). The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and the applicable courts in the Customer Territory, at the discretion of the party filing a claim in relation to this Agreement.

10. Entire Agreement

This Agreement together with the Quote and any amendments attached to this Agreement constitutes the entire understanding and agreement between the parties pertaining to the subject matter hereof and, as of the Effective Date, supersedes all previous and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written, between the parties.

11. Waiver; Amendment

No waiver, modification, extension, addendum or any other change of any provision of this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought. The waiver by either party of a breach or a default of any provision of this Agreement shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to enforce any provision of this Agreement be construed as a waiver of any right, power or privilege by such party.

12. Survival

Section B, Section C, Subsections 3, 4 and 5 of Section D, Sections E, F, G, H and any other provisions contained in this Agreement which are required to ensure that the parties fully exercise their rights and obligations hereunder shall survive the termination or expiration of this Agreement.

EXHIBIT A

TRAVEL POLICY

The following out-of-pocket expenses are incurred by Customer for implementation and on-going support activities. These expenses differ based on the Customers location, as detailed in the Quote:

- For USA based customers, charges for Airfare, Mileage, Tolls & parking, Transportation, Meals, Lodging, Telephone Charges & Shipping costs will be charged in accordance with the current United States Government rates as details by the U.S. Department of State.

- For Rest of World Customers:

  o Airfare - Coach Class only, unless an upgrade is made available at no additional cost
  o Mileage - Mileage in accordance with the current local allowances as stipulated by the employee's in country costs.
  o Tolls and Parking
  o Transportation (taxi/rental car) while at Customer site – compact whenever possible unless accommodating two or more passengers
  o Meals - Actual and reasonable cost at modestly priced restaurants
  o Lodging - business class
  o Telephone charges
  o Shipping Charges - When Customer requests letters/packages to be shipped overnight, charges are to be billed to Customer.

<u>i2's policy is to obtain the lowest airfares possible.</u> i2 has contracted with an established travel agency committed to finding the most cost-effective fares for all i2 travel. Our consultants are very aware of financial constraints, and they make every effort to make their travel arrangements as soon as site visit dates are confirmed. Whenever possible, all airfare is booked not less than fourteen (14) days in advance of travel.

i2 uses discretion in choosing hotels (i2 receives corporate rates through its travel agent) and is always open to suggestions from Customer regarding local hotels.

EXHIBIT B