Software As A Service Agreement

Last updated: Aug 8, 2024

This **Software As A Service Agreement** (the "**Agreement**") constitutes the contract by and between N. Harris Computer Corporation, a corporation existing under the laws of Ontario ("Licensor") and the person or entity identified on the Quote as the Customer of the Software ("Customer").

By clicking "I Agree", you are agreeing to the terms of this Agreement and you (A) accept this Agreement and agree that Customer is legally bound by its terms; and (B) represent and warrant that, if Customer is a corporation, governmental organization, or other legal entity, you have the right, power, and authority to enter into this Agreement on behalf of Customer and bind Customer to its terms. If Customer does not agree to the terms of this Agreement, do not click "I Agree," or attempt to access the Services or to download the Terminal Software. This Agreement is effective on the date that you agree to the terms of this Agreement (the "Effective Date").

THEREFORE, the parties agree as follows:

1. Definitions

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

a) **"Confidential Information"** means, with respect to a party hereto, all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential, proprietary, or is confidential under applicable law or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information of Licensor shall include, without limitation, the Software, the Documentation, and any information with respect to the Services that Licensor may provide to Customer from time to time, including without limitation, all information disclosed by Licensor relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction. Confidential Information of Licensor shall include, without limitation, the Services, the Software, Documentation, and any information with respect to the Services that Licensor may provide to Customer from time to time, including without limitation, the terms and conditions of this Agreement and all information disclosed by Licensor relating to the security of its facilities, computer systems and products.

b) **"Data"** means all data that is received by Customer and all other content transmitted, posted, received or created through Customer's use of the Services or the Software.

c) **"Documentation"** means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Software, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the Software are provided to the Customer.

d) **"Licensing Agreement"** is the i2 Software License Agreement that applies to the software component of the Software – which is the Terminal Software – and is available at www.i2group.com as more delineated in a Quote.

e) **"Quote"** means the quotation provided by Licensor to Customer, and accepted by Customer, that accompanies this Agreement and which is further defined in the Licensing Agreement; the Quote details additional terms associated with Customer's participation as a Customer together with any related services. More than one Quote may be established for Customer. For clarity, the Quote may also include further terms and conditions applicable to the use of the Software and several Quotes may be used for different aspects of the Software.

f) **"Services"** and **"Software Services"** each means the web-based service(s) commonly referred to as a "Software as a Service" (SaaS) solution to be provided by or on behalf of Licensor under this Agreement that includes hosting, monitoring, operating and maintaining the Software as a service at a site owned or controlled by Licensor and the delivery of non-exclusive access via the Internet to Customer to use the Software, as a service, granted to Customer pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Services in a manner as determined by the Customer.

g) **"Software"** means the Services and the Terminal Software.

h) **"Terminal Software"** means that portion of the Software that is downloaded on each local server or any other device (including items such as a laptop, portable tablet, or any other computing type device) in order to access the Services and which may also be referred to as "Software" which are listed in the Quote to either this Agreement or the Licensing Agreement and which is at least the i2 Analyst's Notebook software product.

i) **"Term"** has the meaning ascribed to it in section 5 of the Agreement.

j) **"Third Party Components"** means any third party telecommunications, energy/utility transportation, managed facilities and/or software applications and services that Licensor or its service providers have licensed or purchased and provided access to or otherwise made available as part of the Services or, when applicable, have been purchased by the Customer for us with the Services. These Third Party Components can include a third party hosting provider and social networks.

k) **"User"** means an employee or duly authorized agent of Customer that has been authorized by the Customer in writing to access and use the Services.

2. Authorization

Subject to the terms and conditions of this Agreement, Licensor hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term (a) to install and use the Terminal Software on the number of sites specified in in the Quote (the "**Sites**) solely for use with the Services but otherwise subject to the terms of the Licensing Agreement; (b) to allow Users to access and use the Services on a defined term subscription basis at the Sites and in accordance with the Documentation solely for Customer's internal business purposes; and (c) to use, copy and modify the Documentation solely for the purpose of creating and using internal training materials relating to the Services.

3. Fees

In consideration of the provision of the Services and access to the Services, Customer will pay the applicable fee to Licensor in accordance with the terms of the Quote. For normal SaaS Services, the fee shall be an annual subscription fee to be paid yearly in advance unless the Quote states otherwise. Customer agrees to pay any and all additional fees, including License Fees, associated with any use of the Software per the Quote.

In the event that the Quote states that the Customer will be provided with the i2 SW Subscription and Support Program, the Customer shall pay the associated fees as set out in the Quote. If Customer fails to make any payment when due, in addition to all other remedies that may be available: (a) Licensor may charge interest on the past due amount at the rate of 1% calculated daily and compounded monthly or, if lower, the highest rate

permitted under applicable law; and (b) Customer shall reimburse Licensor for all costs incurred by Licensor in collecting any late payments or interest, including legal fees, court costs, and collection agency fees; and (c) if such failure continues for thirty (30) days following written notice thereof, Licensor may prohibit access to the Software and the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such prohibition of access to the Software.

Licensor shall provide Customer with an electronic invoice detailing payment due to Licensor. Upon the receipt of Licensor invoice sent to Customer, Customer shall pay Licensor the fees by bank transfer within thirty (30) calendar days upon the receipt of a valid invoice. Licensor will not provide credits or refunds for fees paid except as expressly set out in this Agreement.

The fees are exclusive of any applicable sales, use, services, consumption, excise and other transaction-based taxes which may be assessed by any governmental body, agency or taxing authority (including at the federal, provincial, county and/or local level). Customer is responsible for all goods and services, harmonized sale, sale, service, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, provincial, state or territorial governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Licensor's income.

To the extent that Users or the Customer use any services or access any third party sources that provide Data for the use of the Customer or set up such usage in an automated format that contravene Subsection 6(k) of this Agreement, additional 'usage charges' may be required to be paid by the Customer as invoiced by Licensor.

To the extent that the Customer procures any Third Party Components on its own behalf, the Customer will be liable for all payments to the applicable providers and the Licensor.

4. Additional Professional Services or SW Support

If the Customer requests any additional professional services, such services shall be supplied to a separate professional services agreement.

If the Customer obtains the i2 SW Subscription and Support Program, the i2 SW Subscription and Support Program shall be subject to and provided in accordance with the terms of the Licensing Agreement.

5. Term

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the Effective Date detailed in the Quote and expire after the duration and/or date specified in the Quote (the "**Term**"). If there is no duration or expiry date in the Quote, the Term will continue for a period not less than one year from the Effective Date. In both cases, the Agreement's Term will automatically renew for additional one year periods. Each renewal will extend the Term accordingly. The Customer may end the Term by providing no less than ninety (90) days' notice prior to the end of the then current Term. Otherwise, this Agreement will end as permitted under Section 12.

6. Restrictions on Use

(a) Except as expressly provided herein, Customer may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the license rights granted under this Agreement or otherwise use the Software or Services except as expressly permitted by this Agreement without the prior written consent of Licensor.

(b) Customer agrees that it will not reverse engineer, decompile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the Software or Software Services, or attempt to otherwise convert or alter the Software or Software Services into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.

(c) Customer may duplicate Documentation, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.

(d) No third party, other than duly authorized agents or employees of Customer authorized pursuant to Section 2 hereunder as Users, shall have access to or use of the Software or Services. Where the agents are third parties and not employees of the Customer, the Customer must inform the Licensor of the identities of any such agents and provide additional information as reasonably requested by Licensor. The Licensor may provide authorization for the agents to have access or to not have access to the Services and Software at the Licensor's sole and unfettered discretion. Customer is responsible for the acts of its duly authorized agents and any act or omission carried out by an agent or employee shall be deemed to be an act of the Customer.

(e) Customer shall not copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.

(f) Customer shall not access the Services or permit any agents access to the Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Licensor.

(g) The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or Information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information, and otherwise affects the performance of the third party service provider; (ii) violates the terms of service document of the relevant host provider as made generally available the by the host provider identified in your Quote; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations.

(h) Customer shall not interfere with or disrupt services or networks connected to the system used to provide the Services and shall not attempt to gain unauthorized access to the Services or such services or networks connected to the system used to provide the Services.

(i) Customer shall not provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.

(j) In addition to its termination rights under Section 16, Licensor my restrict or limit Customer's access to the Services if Licensor reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in Licensor' reasonable opinion poses any risk of any kind or nature to Licensor or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, Licensor will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access after Licensor has had reasonable assurance that such conduct has been permanently discontinued. In addition to and without limiting the foregoing, Licensor reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Customer in connection with its use of the Services that Licensor determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Licensor or its service provider's network, business or other customers.

(k) The Customer shall not automate any aspect of the Service during the Term. Any breach of this subsection will permit the Licensor to invoice a 'fair usage' charge against the Customer where the Customer has automated accessing or querying an i2 Service or Third Party Component with a human performing the action. The right to payment under this section is not the sole remedy available to Licensor and all other remedies available at law and in equity are still available.

7. Services Availability (SaaS)

(a) Licensor shall provide all facilities, equipment, and software required to make the Software Services available.

(b) Licensor shall use commercially reasonable efforts to make the Services available to Users twenty four (24) hours per day, seven (7) days per week but the Licensor does not warrant any service levels associated with the Services;

(c) The Licensor reserves the right to suspend the Software Services for maintenance, updates, and other internal requirements. The Licensor shall use commercially reasonable efforts to keep such suspensions to less than six hours every thirty days unless it is an emergency or critical maintenance issue;

(d) Licensor reserves the right to have additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Software Services. Licensor shall inform Customer of such criteria but Licensor shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, Licensor reserves its rights to not grant to such Users access to the Software Services. Licensor reserves its rights to restrict access to the Software Services to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software Services.

(e) Licensor shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure availability of the Software Services. Licensor will initially be responsible for the creation and maintenance of all User accounts. Upon notice from Licensor, the Customer shall be responsible for the creation and maintenance of User accounts. Customer, not Licensor, shall be responsible for creating and maintaining all User account information and for performing all other application level system administration functions that are available within the Software Services.

(f) Licensor shall comply with the terms and conditions regarding access and use of Data as set out in Section 18 of this Agreement.

(g) Customer acknowledges that in order to provide the Services, Licensor may be required to purchase access rights to some of or all of the Third Party Components. Additionally, in certain circumstances the Customer may be required to purchase access to certain Third Party Components. In either case, Customer acknowledges that the availability of such Third Party Components is based solely on the best information available to Licensor and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Licensor to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Licensor's control, then (a) Licensor shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Components; and (b) Licensor may in its sole discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components, subject to the right to terminate in accordance with section 5.

(h) Licensor provides the Services to the Customer without any specific strict limits on data usage at this time. Rather, the Customer's use of data storage is guided by a commitment to fairness and responsibility. As such, the Licensor encourages the Customer to be mindful of its storage practices and to avoid excessive use that could impact system performance or availability. The Licensor reserves the right to interpret and apply this policy in a way that best serves the Licensor's organizational objectives and the collective interests of all of the Licensor's customers. Any requirement to limit data usage on the part of the Customer shall be communicated to the Customer in accordance with the notice provisions of this Agreement or as the parties agree to otherwise, including via email.

8. Customer Responsibilities

(a) Customer Equipment. Customer agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Customer's facilities required for Users to access and use the Services. Licensor shall not be responsible for the operation of any Internet, network or other communication services. Customer further acknowledges that access to and the operation of the Services requires Customer's and Users' hardware to be of sufficient quality, condition and repair, and Customer agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by Licensor. Customer will agree to all requirements as set out by a Third Party Component provider to the extent that the Customer's ability to access the Services is contingent upon such agreement as detailed by the Third Party Component provider

(b) Passwords. Customer agrees to comply with all Licensor security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords and user ID's assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Licensor in writing to change Customer or User's password(s) for any reason, including without limitation if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify Licensor immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.

(c) Users. The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Licensor from time to time for Users; and (iii) informing Licensor of any information about Users' actions that may affect either the Services or third party data contained in or used by the Services, or Licensor' ability to provide the Services as contemplated by this Agreement.

(d) Compliance with Laws. Customer represents and warrants to Licensor that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws including but not limited to those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.

(e) Data Security. Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as Licensor') computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Licensor' servers; and (iii) Data is encrypted.

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

9. Delivery Schedule

The parties will mutually agree in writing upon a delivery schedule for access to be granted to the Services and the setup of User accounts.

10. Warranty and Warranty Disclaimer

a) **Limited Warranty.** Licensor warrants to Customer that the Services shall be performed at a level and shall substantially conform to the specifications, as stated in Licensor's Documentation provided to Customer, provided that all use of the Services is for the purposes and in the environment for which they were designed and in accordance with such specifications as may be set out in the Quote and as modified from time to time. Customer's sole remedy in the event the Services do not conform to the foregoing limited warranty is for Licensor to use commercially reasonable efforts to correct such non-conformance and the right to terminate this Agreement in accordance with Section 16(b).

b) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 10(A), THE SERVICES, THE TERMINAL SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS, AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

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

LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED.

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

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

CUSTOMER CONFIRMS THAT IT HAS THE SOLE RESPONSIBILITY FOR ALL USE OF THE SERVICES AND TERMINAL SOFTWARE, FOR ANY PRODUCTS OR SERVICES THAT USE THE TERMINAL SOFTWARE AND SERVICES, AND ANY USE OF SUCH PRODUCTS OR SERVICES BY OTHERS, INCLUDING BUT NOT LIMITED TO THE RESPONSIBILITY TO ASSESS WHETHER THE SERVICES AND TERMINAL SOFTWARE AND USE THEREOF IS APPROPRIATE FOR CUSTSOMER'S INTENDED PURPOSES, AND CONSIDERING THE RISKS ASSOCIATED WITH THE SERVICES AND TERMINAL SOFTWARE AND USE THEREOF. Customer agrees to indemnify, hold harmless, and, upon Licensor's request, defend Licensor and its affiliates and their respective contractors, licensors and agents and all such

person's officers, directors and employees, from and against all third party claims, actions and demands, and all resulting liabilities, damages and losses of any type, expenses (including reasonable legal fees), settlements, or judgments suffered or incurred by such parties to the extent that they result from or arise out of: (i) access, installation or use of the Software by the Customer, the Users; (ii) the failure of Customer to comply with any applicable laws, including applicable export laws; (iii) breach of any of the terms and conditions of this Agreement, and (iv) any representations by Customer or the Users regarding the Services and Terminal Software, or the use of performance thereof, howsoever made, without the prior written consent of Licensor.

THE WARRANTY DISCLAIMERS ABOVE REPRESENT THE INHERENT RISKS ASSOCIATED WITH PLATFORMS AND THE FACT THAT THE SERVICES AND TERMINAL SOFTWARE ARE BEING PROVIDED AT NO COST TO THE CUSTOMER. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY SET OUT IN THIS AGREEMENT ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF BARGAIN BETWEEN THE PARTIES AND LICENSOR WOULD NOT BE ABLE TO PROVIDE THE SOFTWARE, OR THE DOCUMENTATION WITHOUT SUCH LIMITATIONS.

11. Limitations on Liability

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND REPRESENTATIVES SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING IN RESPECT OF LOST PROFIT OR REVENUE OR OPPORTUNITY, EXPECTED SAVINGS OR ANY OTHER ECONOMIC CONSEQUENTIAL LOSS OR DAMAGE) OR ANY LOSS OF, OR DAMAGE TO, DATA, EVEN IF SUCH DAMAGES ARE FORESEEABLE OR LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ANY LIABILITY OR OBLIGATIOIN TO PAY BY THE LICENSOR TO CUSTOMER FOR ANY REASON, THEN THE LICENSOR'S AND ITS OFFICERS', DIRECTORS', EMPLOYEES' AND REPRESENTATIVES' LIABILITY SHALL BE LIMITED TO THE ACTUAL DIRECT DAMAGES SUFFERED BY CUSTOMER AND SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNT PAID BY THE CUSTOMER TO THE LICENSOR IN THE PRECEDING TWELVE MONTH PERIOD BEGINNING ON THE DAY ON WHICH THE INCIDENT GIVING RISE TO THE LIABILITY OR OBLIGATION TO PAY FIRST AROSE.

The foregoing limitations and exclusions of liability shall apply in respect of any expense, damage, loss, injury, or liability of any kind, regardless of the form of action or theory of liability (including for breach of contract, tort, negligence, strict liability, by statute or otherwise) and shall survive a fundamental breach or breaches or the failure of the essential purpose of this Agreement or of any remedy contained herein.

12. Cancellations and Termination

(a) This Agreement may be terminated as follows:

i. If either party is in material breach of any of its obligations or any provision under this Agreement, the other party must notify the breaching party in writing of such default (a "**Default Notice**"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party within ninety (90) days, or issue a written notice of its own disputing the alleged default within thirty (30) days, of the date of receipt of a Default Notice. If the breaching party fails to correct the default within such ninety (90) day period, and did not issue a notice disputing the alleged default within such thirty (30) day period, the other party may terminate this Agreement upon written notice to the other party to that effect.

ii. Licensor may terminate this Agreement effective immediately upon written notice to Customer if Customer has breached its obligations of confidentiality or any intellectual property right or proprietary right of Licensor.

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

13. Effects of Termination

In the event of termination or expiration of this Agreement:

a) All rights granted to Customer in this Agreement shall immediately terminate and Licensor will immediately cease to perform or provide the Services. All licenses and rights in the Software shall end immediately upon the effective date of termination. The Customer shall erase all copies of the Terminal Software and shall no longer access or attempt to access the Services.

b) The Licensing Agreement shall be terminated coincidentally with the termination of this Agreement but only in relation to the Terminal Software.

c) Each party shall either purge or destroy all copies of any Confidential Information of the other party in its possession or under its control (except as required under any statute or legislation related to retention requirements or which is in an inaccessible backup copy made in the regular course), and provide a duly authorized certificate of an officer of the party confirming same within thirty (30) days of a request made by the other party.

d) Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.

14. Ownership

(a) By Licensor. Licensor, its service providers and its licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Terminal Software, the Services, Third Party Components and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Services, Software, or underlying software except the limited right to access and use the Software and Services in accordance with the terms of this Agreement and Licensor and its licensors reserve all rights not expressly granted to Customer. Customer's rights to use the Terminal Software shall be in compliance with the Licensing Agreement. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to Licensor a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services and Software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software and for any information provided by the Customer.

(b) Customer Data. As between Licensor and Customer, all Data will remain the sole and exclusive property of Customer. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Customer grants to Licensor a world-wide, non-exclusive, royalty-free license to access the Data for the purpose of performing the Services. Access to the Data shall only be by Licensor's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Licensor may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

Customer grants to Licensor a world-wide, non-exclusive, royalty-free license to aggregate or compile Data with the customer data of other customers using the Services so long as such aggregation or compilation

omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Licensor shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants Licensor the right to access Data to provide feedback to Customer concerning its use of the Services.

(c) Data and Privacy Policy of Customer

The Customer represents and warrants to Licensor that – and all such representations and warranties are subject to the exclusions set out in subsection 14 (d):

    i.   Data that is either provided to or acquired by Licensor from Customer is owned exclusively by Customer and that the Customer has full right and title to provide the Data to Licensor;

    ii.   Data that is either provided to or acquired by Licensor on behalf of the Customer is subject to a privacy policy in effect as of the Effective Date and those from which the Customer has acquired the Data have provided to Customer their written consent for its collection, use and storage by Licensor and its third-party service providers in accordance with this Agreement and in any applicable jurisdiction;

    iii.   Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created, or disclosed pursuant to this Agreement;

    iv.   Licensor's obligation for any Data that is stored by the Licensor (either directly or indirectly through the use of Third Party Components) are entirely as a result of the Customer's use of the Services and are solely at the risk of the Customer: the Licensor does not provide any security warranty of any kind in the use of the Service; and

    v.   Customer will not provide Licensor with data of any kind for which Licensor either has no need or does not have the right to collect, use and store under the terms of this Agreement.

(d) Data from the Licensor.

To the extent that the Data is received by the Customer either directly from the Licensor or through a third party provider that has an agreement to provide data with the Licensor and to which there is a reference in the Quote, then Licensor warrants that the Data is provided with full right by Licensor to provide the Data to the Customer subject to all of the warranties and representations made on the part of the Customer and based on other information provided by the Customer to the Licensor.

15. Confidential Information

The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who have entered into a non-disclosure agreement at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.

In addition to any other restrictions on Licensor' use of the Data, the confidentiality obligations above apply except to the extent that both parties agree that the Data may be subject to privacy laws providing for the owners of the Data to review such Data or to challenge the collection and storage of the Data. Customer shall indemnify and reimburse Licensor in relation to all reasonable fees and other disbursements paid by Licensor to comply with such requests, whether by an individual or a government body, or to challenge such requests at either Licensor' or Customer's request. Customer represents and warrants to Licensor that as of the Effective Date no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software.

16. Indemnity

Customer is solely responsible for its Data, its use, and its Users' use, of the Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold Licensor and its third party service providers, if applicable, and each of their respective officers, directors, employees and agents (the "**Indemnities**") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with (i) the use of the Services including but not limited to any Third Party Components by Customer or its Users; (ii) any breach by Customer or its Users of this Agreement; or (iii) Customer's Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

17. General

(a) **Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of Canada and the province of Ontario, each as applicable. This Agreement expressly excludes that body of law applicable to choice of law, the Uniform Commercial Code and the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable. Either party may bring a claim in the jurisdiction in which that party is generally located.

(b) **Mediation:** Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time**.**

(c) **Notice:** Any notice required or permitted hereunder shall be written in English and shall be deemed to have been given when dispatched by email to the Licensor or to the Customer, or when delivered by overnight courier or air-mailed prepaid first class registered or certified mail and addressed to the respective representatives set out in the Quote once actually received by the Licensor or the Customer. The Quote shall contain any respective email and address to which notice is to be sent. Any email notice to the Licensor shall have a copy sent to: legal@harriscomputer.com

(d) **Currency:** Unless otherwise indicated, all dollar amounts referred in this Agreement are in lawful money of the United States of America.

(e) Use of Name. Customer agrees to the following promotional activities in relation to the purchase of Licensor' solutions, products and services: (i) Customer permits Licensor to issue a mutually agreed upon press release announcing Customer's purchase of Licensor' products and services; and (ii) Customer grants Licensor the right to reasonably include the Customer's name and logo in published lists referencing the users of the products and services of Licensor. Customer may unilaterally withdraw their consent to the above promotional activities at any time by providing written notice to Licensor of said revocation.

(f) Entire Agreement: This Agreement together with the Quote constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof except for the Licensing Agreement, which is an agreement that subsists on its own terms. No terms and conditions in any Customer orders, or in any other documentation employed by or on behalf of Customer in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties. Despite the foregoing, the parties acknowledge that various other agreements may be entered into either contemporaneously with acceptance of this Agreement or otherwise and as either detailed herein or in the associated Quotes.

(g) Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

(h) Assignment: Customer may not assign any of its rights or duties under this Agreement without the prior written consent of Licensor, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.

(i) Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

(j) Allocation of Risk: Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of the bargain between Licensor and Customer and set forth an allocation of risk reflected in the fees and payments due hereunder.

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

(l) Equitable Relief: Customer acknowledges and agrees that it would be difficult to compute the monetary loss to Licensor arising from a breach or threatened breach of this Agreement by Customer and that, accordingly, Licensor will be entitled to specific performance, injunctive or other equitable relief in addition to or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Customer.

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

(n) Survival: Sections 1 (Definitions), 6 (Restrictions on Use), 8(i) (Compliance with Laws), 8(j) (Security), 10 (Warranty and Warranty Disclaimer), 11 (Limitations of Liability), 13 (Effects of Termination), 14 (Ownership), 15 (Confidential Information), 16 (Indemnity), 17 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.