Software As A Service Agreement

This **Software As A Service Agreement** (the "**Agreement**"), 00005996 is entered into on DATE (the "**Effective Date**") by and between [San Leandro Unified School District] ("**Customer**") and N. Harris Computer Corporation of 1 Antares Drive, Suite 400, Ottawa, Ontario K2E 8C4 ("**Harris**").

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

1. Definitions

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

(a) "Annual Subscription Fees" means the annual subscription fees set out in Schedule "A" to this Agreement.

(b) "Change Order" means any written documentation between the Customer and Harris evidencing their agreement to change particular aspects of this Agreement.

(c) "Completion of Services" means the Professional Services are complete and shall be deemed to have occurred on the date which the Customer commences using the Services.

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

(e) "Data Conversion Fees" shall have the meaning set forth in Section 10 of this Agreement.

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

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

(h) "Fees" means the Annual Subscription Fees, Professional Services Fees, Conversion Costs and other Fees as may be further described and listed in Schedule "A" of this Agreement.

(i) "Professional Service(s)" means those implementation, training, consulting and professional service(s) provided by the Harris Professional Services team as further described in Schedule "A" and Schedule "C" to this Agreement.

(j) "Professional Services Fees" means the Professional Service(s) fees set out in Schedule "A" to this Agreement.

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

(l) "Software" means the software product(s) that are owned by Harris, including those products that are delivered as a SaaS solution and the Terminal Software, as listed in Schedule "A".

(m) "Support Services" means those support services to be provided by the Harris Support team as further described in Schedule "D" to this Agreement.

(n) "Terminal Software" means that portion of the eTrition software product that is downloaded on each point of sale terminal in order to access the Services.

(o) "Third Party Components" means any third party telecommunications, energy/utility transportation, managed facilities and/or software applications and services that Harris or its service providers have licensed or purchased and provided access to or otherwise made available as part of the Services.

(p) "User" means an employee or 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, including without limitation, payment by Customer of the Professional Services Fees required for set-up and the Annual Subscription Fees, Harris hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term (a) to install and use the Terminal Software on the number of serving lines and at the number of sites specified in Schedule "A" (the "**Serving Lines**" and "**Sites**", respectively); (b) to allow Users to access and use the Services on an annual subscription basis from the Serving Lines solely 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 receiving the Terminal Software, Services and the Professional Services, Customer agrees to pay to Harris the Fees and all applicable travel and lodging expenses as described in Section 4 of this Agreement in accordance with the payment terms as defined in Schedule "A".

The Annual Subscription Fees, Professional Services Fees and any other fees set out in this Agreement are exclusive of taxes. Customer 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).

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

pursuant to Section 16(b).

4. Travel and Lodging Expenses

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

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

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

5. Term

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

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 Harris.

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

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

(d) No third party, other than duly authorized agents or employees of Customer authorized pursuant to Section 2 hereunder, shall have access to or use of the Software or Services.

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

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

(g) The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or Information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations.

(h) Customer shall not knowingly transmit any data to the system used by Harris to provide the Services that contains software viruses or other harmful or deleterious computer code, files or programs.

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

(j) Customer shall not use the Services to store or transmit any material that is infringing, libelous, an invasion of privacy, obscene, offensive, harmful, illegal or would otherwise violate or infringe the rights of any third party.

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

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

7. Services Availability (SaaS)

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

(b) Harris shall use commercially reasonable efforts to make the Software Services available to Users twenty four (24) hours per day, seven (7) days per week; subject to the terms further defined in Schedule "B".

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

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

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

(f) Customer acknowledges that in order to provide the Services Harris may be required to purchase access the Third Party Components. Customer further acknowledges that the availability of such Third Party Components is based solely on the

best information available to Harris and its service providers as of the Effective Date including third party representations and government regulations and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Harris to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Harris' control, then (a) Harris shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Components; and (b) Harris may in its sole discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party Components, subject to the right to terminate set out in Section 16.

8. Customer Responsibilities

(a) Cooperation by Customer. Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of Customer and its staff and agrees to act reasonably and co-operate fully with Harris to achieve the Completion of Services related to any Professional Services provided by Harris. To enable Harris to provide effective Support Services, the Customer will establish auto remote access based on remote access procedures compatible with Harris' practices.

(b) Project Manager. Customer shall appoint a project manager who shall work closely with Harris to facilitate the successful completion of the implementation process and who shall be responsible for supervising Customer staff and ensure their co-operation with and participation in such process during any Professional Services engagement.

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

(d) Passwords. Customer agrees to comply with all Harris security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords and user ID's assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Harris in writing 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 Harris immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.

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

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

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

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

9. Delivery Schedule

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

10. Data Conversion Fees

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

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

Wherever possible, the data extraction shall be done twice. The first extraction is to test and create the conversion tools. The second extraction is done when the implementation is ready to go live.

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

11. Forms

The use of Harris standard forms ensures compatibility with the Software Services. Customer agrees to use standard Harris forms for use with the Services. Customer may purchase standard forms from Harris and Harris agrees to provide said forms to Customer at a competitive price. Customer must notify Harris in writing in the event that Customer elects to order forms from a third-party forms provider so that Harris is able to confirm that said third-party provider forms are compatible with the Software Services. In the event that Customer purchases non-compatible forms and has not received written confirmation from Harris that said forms are compatible with the Services, Harris may be required to modify the Services to be compatible with the third-party provided forms. In such event, Harris may issue a Change Order to Customer for the purpose of completing modifications to the Services and underlying software. Said modifications shall be billed to Customer at the rate of one hundred-seventy five dollars ($175) per hour; with a minimum of four (4) hours effort. Said Change Order must be executed by both parties prior to commencement of the corresponding Professional Services.

12. Professional Services & Support Services

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

(b) **Manner of Performance**. Harris shall perform the Professional Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. Harris shall determine in

its sole discretion the manner and means by which the Professional Services shall be performed, with due consideration of adequate knowledge transfer to Customer personnel. Harris will communicate openly with Customer in its methodology, manner and means.

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

13. Warranty and Warranty Disclaimer

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

b) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 13(A), THE SERVICES, THE SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

HARRIS, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE 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.

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

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

14. Limitations on Liability

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF HARRIS AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY HARRIS IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE

THE ANNUAL SUBSCRIPTION FEES PAID BY CUSTOMER TO HARRIS UNDER THIS AGREEMENT.

CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL HARRIS BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

15. Change Order Process

With respect to any proposed changes to the Professional Services defined by this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change in the allocation of the resources of Harris applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require Harris to provide additional work hours, Harris may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing the Professional Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute.

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

Name: _____ Title:_____

Name: _____ Title:_____.

16. Cancellations and Termination

(a) Professional Services may be cancelled as follows:

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

(b) This Agreement may be terminated as follows:

i. If either party is in material breach of any of its obligations or any provision under this Agreement, the other party must notify the breaching party in writing of such default (a "**Default Notice**"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party within 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. If Customer has failed to pay any amounts when due under this Agreement, Harris shall have the right to (i) suspend performance of the Services (including Customer access to the Services) until all amounts are paid in full; and/or (ii)

terminate this Agreement effective immediately upon written notice to Customer to that effect.

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

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

17. Effects of Termination

In the event of termination or expiration of this Agreement:

a) All rights granted to Customer in this Agreement shall immediately terminate and Harris will immediately cease to perform or provide the Services.

b) Customer will pay all amounts due under this Agreement up to and through the date of termination and all costs reasonably incurred in collecting the amounts due to Harris (including court costs, attorney fees, and repossession charges to the extent not prohibited by law).

c) Customer shall return to Harris or at Harris' option purge or destroy all copies of any Confidential Information of Harris in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Customer confirming same within thirty (30) days.

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

e) Any cancellation and/or termination of this Agreement prior to the end of the Initial Term shall result in the following: an acceleration of all Annual Subscription Fees due for each year of the Initial Term not already invoiced and/or paid, which amount will be due immediately. This section will not affect Harris's right to collect any further invoiced amounts for other Professional Service Fees.

f) Conditional upon Customer's payment of all Fees that are due to Harris, Harris will furnish the Customer with a copy of the Data in a format to be mutually agreed upon between the parties in writing (typically a .csv file). The anticipated services to provide a copy of the Data are one to two days and will be billed at Harris' then current daily rate. Upon receipt of notice from Customer confirming receipt of the Data, Harris shall have the right to destroy all copies of the Data and delete all Data on the database in accordance with this Section 17(f) and upon request an Officer of Harris shall certify the destruction and deletion to the Customer. Subject to any legal requirement that Harris must retain a copy of the Data, Harris shall not delete the Data for 90 days from the date of termination except: (i) where Harris has provided the Data to Customer pursuant to this Subsection; or (ii) where it has received written instructions from Customer to delete the Data. Following 90 days from the date of termination if Customer has not communicated with Harris regarding the Data, Harris shall have the right to delete all Data at any time as either required by law or as determined by Harris in its sole discretion. Notwithstanding the foregoing, Harris shall be permitted to delete all Data without providing notification to Customer and Harris shall not be required to adhere to the time frames detailed above where Harris is required by law to delete such Data.

18. Ownership

(a) By Harris. Harris its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Software, the Services, 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 Harris and

its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to Harris a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services and Software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software.

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

Customer grants to Harris a world-wide, non-exclusive, royalty-free license to aggregate or compile Data with the customer data of other customers using the Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Harris shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants Harris the right to access Data to provide feedback to Customer concerning its use of the Services.

In the event that Harris will have access to "education records" for the Customer's students as defined under the Family Educational Rights and Privacy Act (FERPA), Harris acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the Client's Education records, as those terms have been defined under FERPA and its implementing regulations, and Harris agrees to abide by the FERPA limitations and requirements imposed on school officials. Harris will use the Education records only for the purpose of fulfilling its duties under this Agreement, and will not share such Data with or disclose it to any third party except as provided for in this Agreement, where required by law, or authorized in writing by Customer.

(c) Data and Privacy Policy of Customer

The Customer represents and warrants to Harris that:

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

ii. Data that is either provided to or acquired by Harris is subject to a privacy policy in effect as of the Effective Date and Customer's customers have provided to Customer their written consent for its collection, use and storage by Harris and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America;

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

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

19. Confidential Information

The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who have entered into a non-disclosure agreement at least as protective of the other party's Confidential Information as this Agreement, or (ii) to

the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.

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

20. Indemnity

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

21. General

(a) Governing Law; Venue: This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware and the federal laws of the United States applicable therein. 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. Customer 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.

(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 to be given to any party to this Agreement shall be given in writing and shall be delivered either personally, mailed by prepaid registered post or sent by facsimile to the appropriate address or facsimile number set out below. Any such notice shall be conclusively deemed to have been given and received on the day on which it is delivered or transmitted (or on the next succeeding business day if delivered or received by facsimile after 5:00 p.m. local time on the date of delivery or receipt, or if delivered or received by facsimile on a day other than a business day), if personally delivered or sent by facsimile or, if mailed, on the third business day following the date of mailing, and addressed, in the case of the Consultant, to:

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

and in the case of the Customer, to:

San Leandro Unified School District
ADDRESS: 14735 Juniper Street
CITY, STATE, ZIP: San Leandro CA., 94579-1222
Attention: Clell Hoffman
Telephone: 510-667-3500
Email: choffman@slusd.us

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

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

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

(f) Entire Agreement: This Agreement together with the Schedules attached to this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof. No terms and conditions in any Customer orders, or in any other documentation employed by or on behalf of Customer in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties.

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

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

(i) Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in

order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.

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

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

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

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

(n) Survival: Sections 1 (Definitions), 3 (Fees), 4 (Travel and Lodging Expenses), 6 (Restrictions on Use), 8(f) (Compliance with Laws), 8(g) (Security), 13 (Warranty and Warranty Disclaimer), 14 (Limitations of Liability), 17 (Effects of Termination), 18 (Ownership), 19 (Confidential Information), 20 (Indemnity), 21 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.

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

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

N. HARRIS COMPUTER CORPORATION	[San Leandro Unified School District]
_____	_____
Signature	Signature
__David Shirey_____	
Name	Name _____
__V.P. of Sales_____	_____
Title	Title
_____	_____
Date	Date

ARTICLE I Schedule "A"
Fees and Payment Schedule *

ETRITION CLOUD SOLUTION(S)

PRODUCT NAME	QTY	ANNUAL SUBSCRIPTION FEE
PLSS003: Enhanced Dashboards for eTrition SaaS	1	$0.00
PLSS001: eTrition Central (Annual Subscription Fee includes Student Information, Import and Export Utility	1	$0.00
PLSS002: Free/Reduced Application (annual Subscription Fee includes interface with EZMealApp	1	$0.00
PLSS100: POS Site license w/1 serving line Annual Subscription Fee includes POS Management &POS Reporting $750 each	13	$9750.00
PLSS101: POS Serving Line $498.50 each	13	$6480.50
PLSS202: Annual Subscription Fee; Site Inventory	13	$0.00
PLSS301: Annual Subscription Fee; Menu Planning w/Nutrient Analysis	1	$0.00
PLSS8905: eTrition Interface for MySchoolBucks Annual Fee	1	$0.00
TOTAL ANNUAL SUBSCRIPTION FEE FOR CLOUD SOLUTIONS		**$16,230.50**

ARTICLE II PROFESSIONAL SERVICE(S)

DESCRIPTION	QTY	PRICE	EXTENDED PRICE
PSDB100: eTrition Database Configuration	1	$995.00	$995.00
PSMP103: Meal Planning Set & Training	1	$395.00	$395.00
PSOA100: On Line Application One Time Set Up	1	$500.00	$500.00
PSRS102: Remote Services Hourly (services are estimated- if additional time is needed it will be invoiced in 30 minute increments at the hourly rate)	8	$165.00	$1320.00
PLEG201: Central Office Inventory – One time set up fee	1	$495.00	$495.00
PLOA080 Online Applications 8000 Onetime fee until applications are used No expiration date	1	43120.00	$3120.00
TOTAL PROFESSIONAL SERVICES			**$6825.00**

HARDWARE

DESCRIPTION	QTY	PRICE	EXTENDED PRICE
TOTAL HARDWARE			

SUMMARY

TOTAL ANNUAL SUBSCRIPTION FEE	$16,230.50
TOTAL PROFESSIONAL SERVICES*	$6825.00
TOTAL HARDWARE	$0.00
GRAND TOTAL:	**$23,055.50**

* All charges are exclusive of out of pocket expenses for Professional Services performed. Charges for actual and reasonable out-of-pocket expenses including, but not limited to, travel and lodging expenses will be billed monthly as incurred. All pricing is exclusive of applicable sales, use or similar taxes. Customer is responsible for any such taxes that may apply; if Customer is tax exempt, evidence of such tax exemption must be provided. Lapsed payments may lead to denial of access to the Service in accordance with Section 16(b)(ii) of the Agreement.

PAYMENT TERMS:

The Annual Subscription Fee and Hosting Fees will be invoiced upon contract signing, and each anniversary date, and shall be due and payable thirty (30) days from date of invoice.

One-half of the Professional Services Fees stated above will be invoiced upon contract signing and shall be due and payable thirty (30) days from the date of invoice. The remaining Professional Services Fees and any applicable travel and lodging expenses will be invoiced as incurred and shall be due and payable thirty (30) days from the date of invoice.

ADDITIONAL PROFESSIONAL SERVICE(S) FEES:

Additional Professional Services may be provided on-site or via the telephone. Professional Service work provided via telephone is billed at the rate of one hundred-fifty dollars ($150) per hour. On-site work is billed at the rate of one hundred-fifty dollars ($150) per hour with a minimum of six (6) hours plus travel, lodging and per diem expenses. Professional Services performed one year or more after the execution date of this Agreement shall be billed at the then current Harris Professional Services rate. Help line support and Support Services do not include training or other Professional Services.

Customer shall incur a seven-hundred fifty dollar ($750) daily surcharge for any Professional Services provided on weekends or Harris recognized holidays; plus the corresponding standard Professional Services fees and any applicable travel charges per paragraph 4.

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

RESET OF TERM TO MATCH FISCAL YEAR:

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

Schedule "B"
Service Availability

Availability and Uptime Objectives:

1. Availability of the Services is defined as when the Software Services are operational and accessible via a public internet connection. The Services shall be unavailable during certain scheduled downtime periods for the purpose of conducting maintenance and upgrades to the Services.

2. Uptime is defined as the time that the Services are either available or in scheduled downtime. Specific Service Level Objectives relating to Uptime are as follows:

a. Routine scheduled downtime shall not exceed eight (8) hours per month, averaged over twelve (12) months. Scheduled downtimes shall occur, to the extent practicable, during the weekend hours from 10:00 p.m. Friday to 3:00 a.m. Monday Eastern Time.

b. Harris shall notify Customer a minimum of five (5) calendar days prior to any period of scheduled downtime.

c. Harris reserves the right to schedule downtime for emergency situations with less than five (5) advance calendar days' notice.

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

3. Harris will not be responsible for any failure to meet the above Service Level Objectives if the failure is caused by:

a. Customer's network infrastructure (equipment, software or other technology), Customer's connection to the Internet or an Internet failure beyond the control of Harris;

b. A breach of the Agreement by Customer, its employees, subcontractors or agents ("Customer Representatives");

c. The negligence or intentional acts or omissions of Customer Representatives or Users;

d. Scheduled maintenance or other mutually agreed upon downtime; or

e. Any other force majeure event, as set out in Section 21(l) of the Agreement.

Schedule "C"
Professional Services

In order to achieve the Completion of Services, Harris agrees, subject to the terms and conditions of this Agreement, to perform the following Professional Services for Customer:

1. If applicable, oversee and implement the conversion of Customer's existing software application data and migration to the purchased Harris Services substantially in accordance with the below Implementation Process Timetable.

2. Install the purchased Software Services in Harris' hosted environment, perform the necessary set up and configuration operations, perform initial testing and parallel testing in accordance with below Implementation Process Timetable.

3. Provide the training substantially in accordance with the below Implementation Process Timetable.
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IMPLEMENTATION PROCESS AND TIMETABLE

COMPLETION OF SERVICES – GLOBAL TIMETABLE

1. Project Commencement Date: TBD at Implementation Planning Meeting

2. Estimated Project Completion Date: TBD at Implementation Planning Meeting

3. Project Schedule: TBD at Implementation Planning Meeting

The parties shall each assign a project manager responsible for driving tasks and deliverables for their respective teams.

COMPLETION OF SERVICES – KEY PHASE TIMETABLES

1. Conversion Process

Projected Commencement Date:	TBD at Implementation Planning Meeting
Projected Completion Date:	TBD at Implementation Planning Meeting
Estimated Hours Required:	TBD at Implementation Planning Meeting

2. Installation/Setup

Projected Commencement Date:	TBD at Implementation Planning Meeting
Projected Completion Date:	TBD at Implementation Planning Meeting
Estimated Hours Required:	TBD at Implementation Planning Meeting

3. Training

The parties will mutually agree upon an appropriate training schedule based upon the purchased modules and the corresponding required skills and availability of Customer staff members.

(a) Harris recommends a class size of eight (8) students. Customer may be assessed an additional charge at the then current Harris rates for class sizes larger than eight (8) students where it has been determined by Harris that an additional instructor is required.

(b) Customer is required to make copies of the training manuals for the training classes. Photocopy, electronic duplication and distribution is subject to the confidentiality restrictions and obligations contained in this Agreement.

(c) On-line reference documentation is available and may be printed by Customer solely for its internal use in accordance with Section 2 of this Agreement.

Schedule "D"
Support Services

Standard Guidelines

The purpose of this Schedule "D" is to define:

- Harris' standard Support Services coverage (i.e. the Support Services that are included with the annual recurring subscription and hosting fees listed in Schedule "A"),
- Harris' call priorities process and escalation procedures, and
- Other relevant Support information.

Harris reserves the right to make modifications to this Schedule as required; provided, however, Harris shall not reduce the scope of Support Services provided hereunder without the prior consent of the Customer.

The services listed below are services that are included as part of Harris Support Services:

- 800 / 888 Toll Free Telephone support
- Software for Life Philosophy:
    - Guaranteed Support on the purchased Software Services for life, and
    - Seamless and Cost effective upgrade solutions to leverage technological advances.
- Technical troubleshooting & issue resolution
- E-mail support call logging and notification
- Free 24 x 7 online access to Support information
- Standard releases and updates:
    - Defect corrections (as warranted)
    - Planned enhancements
    - State and/or Federal mandated changes (charges may apply depending on scope)
    - Payroll regulated changes
    - Release notes

Support Hours

- Standard Support hours are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated company holidays as defined in this Schedule.
- Support hours may vary by specific product line.
- Weekend Support is available for an additional fee (and must be scheduled in advance).

Response Times

Harris uses commercially reasonable efforts to ensure that incoming calls are handled in the order that they are received. Please note that response times are dependent on the priority of a call and calls are escalated based on the urgency of the issue reported. Response time guidelines are as follows:

Priority 1: 1 - 4 hours

Priority 2: 1 - 8 hours

Priority 3: 1 - 24 hours

Call Priorities: Defined

In order to address Support calls efficiently, Harris' Support Services team will work with each customer to determine the severity of the incident reported and assign a priority level to each case. The priority level relates to the impact of the incident on a particular customer's ability to use Harris' products and/or solutions. Cases are then escalated through various levels of expertise for resolution. When a customer initially contacts our Support Services team about a problem and a trouble ticket is opened, the customer must set an initial Priority Level for the corresponding issue based upon Harris' incident case criteria as follows:

"Priority 1 - High" means a problem has occurred where (i) the customer's mission critical system(s) are down; or (ii) a substantial portion of the customer's mission critical data is at a significant risk of loss or corruption; or (iii) the customer has experienced a substantial loss of service; or (iv) the customer's business operations have been severely disrupted; and in each of the foregoing situations (i) through (iv), no workaround is immediately available.

Examples of a Priority 1 issue include:

- The System or Service is Down or inaccessible
- Inability to process payroll checks
- Inability to process accounts payable checks
- Inability to process bills
- System errors without workarounds
- Incorrect calculation errors impacting a majority of records
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes
- Hand-held interface issues preventing billing

"Priority 2 - Medium" means a problem has occurred where major functionality is severely impaired. The customer's operations can continue in a restricted fashion, although long-term productivity might be adversely affected.

Examples of a Priority 2 issue include:

- System errors that have workarounds
- Calculation errors impacting a minority of records
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)
- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

"Priority 3 – Low" means a problem has occurred that has a limited adverse effect on the customer's business operations or (ii) a minor condition or documentation error that has no significant effect on the customer's operations; or (iii) a suggestion for new features or an enhancement regarding the Services.

Examples of a Priority 3 issue include:

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Recommendations for enhancements on system changes

- Questions on documentation

Call Process

All Support issues or questions must be initiated with a Support call via one of the following channels:

- Phone
- eSupport (via website),
- email, or
- fax

- All calls must contain at a minimum: organization name, contact person, software or product name and version, module and/or menu selection, nature of issue, detailed description of the question or issue and any other information believed to be pertinent.

- All calls are logged into Harris' support tracking database and users are provided with a call id to track their corresponding issue.

- All calls are stored in a queue and calls are handled on a first-call first-response order.

- As the assigned support representative investigates an issue, the user is contacted and advised on the issue status and the course of action that will be taken for resolution. If additional information is required, the user will be contacted by the assigned support representative to supply the information required.

- All correspondence and actions associated with the call are tracked in Harris' support database. At any time, if applicable, a user may log onto Harris' support site to determine the status of their issue.

- Once a call has been resolved, users receive an automated notification by email that the issue (and associated call) has been closed. The email notification contains the entire event history of the call from the time the call was created and leading up to the resolution of the call. Users also have the option of viewing both their open and closed calls, if available to the user, via the Harris' support website.

- If an issue needs to be escalated to a development resource or programmer for resolution, the issue will be logged into our development tracking database and the user will be provided with a separate id number to track the progress of the issue. At this time, the support call will be closed and replaced by the development id number. The development id number will remain open until the issue has been completely resolved. Issues escalated to development will be scheduled for resolution based upon the nature and complexity of the issue.

- Users may contact Support Services at their convenience for a status update on any development issues, or may log onto the Harris Support website to view your issues on-line.

Escalation Process

Harris' escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time a user is not completely satisfied with the resolution of their issue, they are encouraged to escalate with Harris' Support Services organization as follows:

Level 1: Contact the Support Representative assigned to working on the issue

Level 2: Contact the Support Supervisor

Level 3: Contact the Director/Manager of Support

Level 4: Contact the Vice President of Support

Level 5: Contact the Executive Vice President of Harris School Solutions; Nutrition Solutions Group

Holiday Schedule

Below is a listing of Harris recognized holidays. Please note that Support Services is closed on the designated days as outlined below.

- New Year's Day
- President's Day
- Memorial Day
- Fourth of July
- Labor Day
- Columbus Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day
- Day after Christmas

Billable Support Services

The following is a list of services that are "out of scope" and not included in the Agreement; and are considered billable services.

- Extended telephone training
- Forms redesign or creation (includes Bill Prints, Notice Prints and Letters)
- Setup & changes to hand-held interface or creation of new interface
- Setup of new services or changes to services (PAP, ACH, etc.)
- File imports/exports - Interfaces to other applications
- Custom modifications (reports, bills, forms, reversal of customizations)
- Setting up additional companies / agencies / tokens / general ledgers
- Data conversions / global modification to setup table data
- Database maintenance, repairs & optimization
- Extended Hardware & Operating System support
- Upgrades & support of third party software
- Installations / re-installations (workstations, servers)
- Set-up or establishment of a test environment or database

Test Databases & Environments

Harris may need to support a particular customer by maintaining establishing an independent environment for testing purposes. This provides customers with the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to a customer's live environment. The creation of Test Databases & Environments is a billable service, quotations & incremental maintenance rates will be provided on request.

Connection Methods

For certain applications, Harris may require that a communication link be established and maintained between Harris and the Customer site. It is the customer's responsibility to ensure the connection is valid at their location so that Harris Support staff is able to connect to the site and resolve any issues. Harris' supported methods of connection are: Direct internet, Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers).

Hardware and "Third Party Support" – if applicable

Harris is not responsible for providing Support on Third Party components, plug-ins or hardware systems.

Schedule "E"
Security

1. Harris shall store and process Data in accordance with commercially reasonable practices, including appropriate safeguards, to secure such Data from unauthorized access, disclosure, alteration and use.

2. Harris shall ensure that its employees and subcontractors who have potential access to Data have undergone appropriate background screening and possess the required qualifications to comply with the terms of this Agreement.

3. Response to Legal Orders, Demands or Requests for Data.

    a. Where permitted by law Harris shall:

        i. Promptly notify the Customer of any subpoenas, warrants, or other legal orders, demands or requests received by Harris seeking Data;
        ii. Consult with the Customer regarding its response;
        iii. Cooperate with the Customer's reasonable requests, at Customer's expense, in connection with efforts by the Customer to intervene and quash or modify the legal order, demand or request; and
        iv. Upon the Customer's request, provide the Customer with a copy of its response.

    b. If the Customer receives a subpoena, warrant, or other legal order, demand ("requests") or request seeking Data maintained by Harris, Customer will promptly provide a copy of the request to Harris. Harris will, where permitted by law, promptly supply Customer with copies of records or information required for the Customer to respond, and will cooperate with Customer's reasonable requests, and at Customer's expense, in connection with its response.