

SOFTWARE FX AGREEMENT

FX Sales Order No.

Customer P.O. No.

THIS SOFTWARE FX AGREEMENT ("Agreement") is hereby entered into as of August ___, 2009 between HARRIS CORPORATION, RF COMMUNICATIONS DIVISION, contract assignee from M/A-COM, Inc. ("Seller") and THE CITY OF OVERLAND PARK, KANSAS ("Subscriber") on the following terms and conditions:

1. SCOPE OF AGREEMENT

During the term of this Agreement, as set forth in Section 7, Seller agrees to provide Subscriber with software updates, documentation updates and other services, as set forth in Section 3 of this Agreement, for the software developed and provided by Seller and contained within the Subscriber's Designated System(s) as described in Schedule A to this Agreement.

2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

- A. "Contract" means the agreement for the purchase of the Designated System(s).
- B. "Current Software Release Levels" means the most recent Software release announced by Seller as being commercially available. "Commercially available" does not include beta test or other interim releases provided as emergency fixes or software released for beta test or noncommercial or similar purposes.
- C. "Designated System(s)" means the system(s) purchased by Subscriber from Seller (or one of Seller's predecessors) and identified in **Schedule A** to this Agreement. The Designated System does not include Vendor Products, Excluded Products or other systems to which the Designated System may be linked.
- D. "Encrypted Features" means those Software product features which are not included as part of the standard Seller system component or radio product software and which are activated by Seller only upon their being licensed to Subscriber. Examples of such features are Landline Data and Multiple Channel Partitioning for the Seller system components and Priority System Scan for the Seller portable radios.
- E. "Licensed Programs" means all Seller Software programs and associated documentation nonexclusively licensed to Subscriber by Seller for use solely with Subscriber's Designated System for which services are to be provided hereunder.
- F. "Software" means computer programs with executable object code contained on a magnetic tape, semiconductor device or other memory device or system memory consisting of: (a) hardwired logic instructions which manipulate data in a processor and control input-output operations and error diagnostic and recovery routines, and (b) instruction sequences in machine-readable code that control transaction processing, peripheral equipment and administration and maintenance functions, as well as associated documentation used to describe, maintain and use the programs.
- G. "Software FX Classification" means the classification of Subscriber's Designated System(s) within categories of system type and complexity, as defined by Seller from time to time, for the purpose of

determining Subscriber's annual Software FX Fee. Subscriber's Designated System has an "EDACS Simulcast" Software FX Classification.

- H. "Updates" means any commercially available corrections, modifications or enhancements to the Licensed Programs generally released and/or provided by Seller.
- I. "Seller Network Solutions Provider" (NSP) means a person or entity authorized by Seller to sell certain Seller products and systems as an authorized NSP in accordance with the provisions of a NSP Agreement between Seller and such person or entity.

3. DESCRIPTION OF SOFTWARE FX PROGRAM FEATURES

- A. Software Releases Included. With respect to each Licensed Program, and subject to the conditions of this Agreement to specifically include the provisions of Paragraph C.v, below, Seller will provide the Software Updates described below during the term of this Agreement. All Updates shall be shipped to Subscriber's Software FX contact designated in **Schedule A** of this Agreement via protective packaging containing a quantity of programmed Software media (e.g., Proms, Tapes, Compact Discs or diskettes) necessary for Subscriber to fully implement the Software Updates within its Designated System. In addition, each shipment of Software Updates shall contain at least one set of Software release notes detailing the contents of the Software Update and providing installation instructions. All Software Updates and documentation shipped to Subscriber shall be considered part of the Licensed Programs, shall be subject to the terms and conditions of the nonexclusive licenses granted by Seller to Subscriber, and Seller shall be free to license others with respect thereto.
 - i. Software Updates. During the term of this Agreement and subject to Subscriber's performance of its obligations, Seller shall provide to Subscriber Software Updates, released by Seller subsequent to Subscriber's enrollment in Software FX, for the Licensed Programs contained within Subscriber's Designated System. Such subsequent Software Updates may include:
 - a. Enhancements and/or corrections to existing features for all Designated System backbone components and/or radios;
 - b. New features implemented via the system components already contained within Subscriber's Designated System, including unencrypted features for the system backbone components and/or unencrypted features for the radio products.
 - ii. Software Replacements. In the event any Software media contained within Subscriber's Designated System incurs damage, whether from acts of Nature or human error, including, for example, a damaged disk, Seller shall provide replacements for such Software to Subscriber at no additional charge, subject to the terms and conditions of this Agreement.
- B. Software Releases Not Included. The following Software releases are not included within the terms of this Agreement:
 - i. New Products. Any Software products released by Seller for which an earlier generation or release level is not already contained within Subscriber's Designated System. If Subscriber wishes to implement such Software products within its Designated System, it will need to license such products at the fees then in effect and purchase any necessary compatible hardware for operation of such Software.
 - ii. Encrypted Features. Other than encrypted features already licensed and used by Subscriber in the Designated System, encrypted features for Seller products are not included under this Agreement. Such features must be licensed separately by Subscriber at the fees then in effect.

- iii. Third Party Software. To the extent that such Vendor Products are available and compatible with the Designated System, Seller reserves the right to charge an additional fee for upgrades to software programs that are licensed by a third party for use with the Designated System yet are not the property of Seller.
- C. Services Included. Subject to the terms and conditions of this Agreement and Subscriber's compliance therewith, Seller will provide to Subscriber the services described below. Unless otherwise indicated, these services are provided to Subscriber at no additional charge.
- i. Software FX Features Summary. Prior to the general release by Seller of any Software Updates, Seller shall make available a Software FX Features Summary announcing the impending release, and detailing its contents and impact, if any, on any other Seller hardware or Software components. Subscriber acknowledges that older hardware may not have sufficient capacity for the operation of the Software Updates. The contents of the Software FX Features Summary and, in particular, any required changes to the hardware in the Designated System shall be reviewed by Seller with the Customer during the Regular Program Reviews (as defined in Section 3C(iv)) below. **NOTHING IN THIS AGREEMENT OR OTHERWISE REQUIRES SELLER EITHER TO DESIGN UPDATES THAT REMAIN COMPATIBLE WITH DESIGNATED SYSTEM HARDWARE OR TO PROVIDE ADDITIONAL HARDWARE UNDER THIS AGREEMENT, AND SUBSCRIBER WAIVES ANY SUCH DUTY OR OBLIGATION BY SELLER.**
 - ii. Installation Phone Support. Subscriber's Software FX subscription shall include telephone support by Seller's Technical Assistance Center (TAC) personnel with respect to the installation of Software Updates. Such support will be available during Seller's normal business hours (8:00 a.m. to 5:00 p.m. Eastern Standard Time Monday through Friday, excluding holidays) and for a period of ninety (90) days from the date the Software Update is released to Subscriber.
 - iii. Upgrade Planning. If Subscriber is in compliance with the terms of this Agreement and its Designated System is classified as a Single Node Network or higher, upon request by Subscriber, Seller, or a Seller Network Solutions Provider, shall provide an annual consultation service at Subscriber's site to review Seller's planned Software releases and evaluate the operational and financial impact such releases may have on Subscriber's Designated System. If Subscriber is in compliance with the terms of this Agreement and its Designated System is classified below a Single Node Network, upgrade planning is not included within the terms of this Agreement but can be obtained from Seller at the rates then in effect for such service.
 - iv. Consultation. Seller shall have periodic, but not less than quarterly, conference calls and at least one annual meeting on site with the Subscriber to evaluate the performance by Seller and, if applicable, its subcontractor under this Agreement and other matters related to the Subscriber's system, to include, but not limited to, issues related to hardware compatibility issues (the "Regular Program Reviews").
 - v. Software Update Installation – Notwithstanding any other language in this Agreement to the contrary, Seller will be responsible for the installation of Software Updates, at Seller's expense, pursuant to the terms of the current System Maintenance Agreement between Seller and Subscriber and any renewals thereof.
- D. Services Not Included. The following services/products are not included within the terms of this Agreement:

- i. Installation of Terminal Software Updates. Installation of Software Updates to terminal products is not included, but such installations may be obtained through Seller, or a Seller Network Solutions Provider, at the rates then in effect for such service provided that Subscriber is in compliance with the terms of this Agreement.
- ii. Installation of System Software Updates. Installation of System Software Updates by Seller is not included, but such installations may be obtained from Seller, or a Seller Network Solutions Provider, at the rates then in effect for such service, provided that Subscriber is in compliance with the terms of this Agreement.
- iii. Hardware Upgrades. In the occasional event that a Software Update released requires a corresponding hardware change, Subscriber will need to purchase separately the compatible hardware required. Seller will notify Subscriber in advance via the Software FX Features Summary and, if applicable, via Software FX's upgrade planning service and during the Regular Program Reviews of any hardware changes needed in order to implement a Software Update. No such notice will be given for Vendor Products or Excluded Products, and no hardware upgrade may be available.
- iv. Optional Support Services. Other Software support services Subscriber may require, including, but not limited to, training on the administration of the Designated System, customized software programming or troubleshooting through Seller's Technical Assistance Center are outside the scope of this Agreement but may be obtainable through other programs offered by Seller.
- v. Remote Site Transportation Costs. For those sites that are not readily accessible by motor vehicle and require special transportation arrangements in order to gain access for Designated System audits, Subscriber will be responsible, at its expense for providing transportation to the site and reasonable lodging and other support where same day service is not reasonably available.

4. CONDITIONS FOR SERVICE

- A. Subscriber Contact. Seller requests that Subscriber identify its Subscriber Contact in Section 5.B. of Schedule A to this Agreement. To the maximum extent practicable, Subscriber's communications with Seller (with regard to the Software Updates provided under this Agreement) should be through the Subscriber Contact.
- B. Installation. If there is no maintenance agreement between Seller and Subscriber requiring Seller to install, Subscriber agrees to properly install the Software Updates provided by Seller in order of receipt from Seller. Subscriber understands that Software support provided by Seller is limited to Seller's Current Software Release Levels of Licensed Programs for the Designated System.
- C. Media Labeling. Subscriber agrees that if it makes copies of any Software Update supplied by Seller, for backup purposes, Subscriber will reproduce any copyright notice and/or proprietary notice appearing on and/or in such Update and will label all copies with all information, including part numbers and revision levels, provided on the set of media provided by Seller. Nothing herein grants Subscriber any right to sublicense any Software or to distribute copies to any other person, and such sublicensing and distribution is expressly prohibited.
- D. No Modification of Software. Subscriber agrees not to modify, enhance or otherwise alter any Software unless specifically authorized in the user documentation provided by Seller with such Software Update or unless the prior written consent of Seller is obtained. Under no circumstance shall Subscriber create or permit the creation of any derivative work from any Software or the reverse engineering or replication of any Software.

5. FEES, TERMS OF PAYMENT & TAXES

- A. Software FX Fee. Subscriber agrees to pay Seller or a Seller Network Solutions Provider designated in writing by the Seller, an annual Software FX Fee, in the amount set forth in **Schedule A** to this Agreement, plus taxes pursuant to Subsection D below, for Software FX services provided during the term as defined in Schedule A. Subsequent years' Software FX Fees, beyond Subscriber's first-year fee specified in **Schedule A**, may or may not remain at the same rates. Any significant changes made to Subscriber's Designated System(s) or mobile equipment which results in their falling into another Software FX Classification will be reflected in the following year's Software FX Fee. If Seller's rates for Software FX should increase, Subscriber will be notified in writing of any such increases at least one hundred twenty (120) days prior to the end of Subscriber's yearly Software FX period then in effect.
- B. Due Date. Subscriber's first-year Software FX Fee will be invoiced upon receipt of this Agreement signed by Subscriber. Payment will be due sixty (60) days from the date of the invoice. Subscriber's subsequent years' Software FX Fees will be automatically invoiced sixty (60) days prior to the commencement of the subsequent year's term. Payment of all amounts due is a condition precedent to Seller providing any future Software Updates or other services.
- C. Payment Terms. Payment shall be made in United States currency. All amounts over thirty (30) days past due shall accrue interest from the due date at the rate of one and one-half percent (1-1/2%) per month (or such lesser rate as is the maximum permissible rate under applicable law). In addition to payment of interest, Subscriber agrees to pay all collection costs and enforcement expenses, including reasonable attorneys' fees, if Seller must bring an action to collect any amount owed by Subscriber or to enforce any rights in any bankruptcy or similar proceeding involving Subscriber.
- D. Taxes. In addition to all fees specified herein, Subscriber shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Subscriber, unless Subscriber shall otherwise furnish Seller with a tax-exemption certificate acceptable to the applicable taxing authorities.
- E. Discontinuance. Subscriber understands that if Subscriber discontinues and then subsequently resumes participation in the Software FX Program, Subscriber will be required to pay a re-entry fee for any benefits provided to Subscriber upon re-entry to the Software FX Program plus the Software FX Fee for the term then commencing.

6. TITLE

The Licensed Programs and all copies thereof, in whole or in part, and all Software, documents and materials which may be provided by Seller hereunder for use in connection with such Programs are furnished nonexclusively as part of the Licensed Program(s) defined in the applicable software license agreement(s) and shall remain the exclusive property of Seller and will be held in confidence by Subscriber in accordance with the provisions of each such software license agreement. Under no circumstance shall Subscriber create or permit the creation of any derivative work from any Software or the reverse engineering or replication of any Software.

7. TERM & TERMINATION

- A. Software FX services will be provided by Seller to Subscriber for an initial one-year term beginning on January 1, 2009, and thereafter on a year-to-year basis as provided herein, subject to prior payment in full of all outstanding fees and charges at the time of renewal and compliance with the provisions of this Agreement.
- B. Subscriber's Software FX enrollment shall be automatically renewed at the end of the first- year term for a second year's term and on a succeeding yearly basis thereafter unless either party notifies the other in

writing, at least ninety (90) days prior to the end of the yearly period then in effect, that this Agreement will not be renewed.

- C. Seller shall have the right to suspend or terminate this Agreement upon thirty (30) days' prior written notice if Subscriber fails to pay any fees or charges due hereunder or if Subscriber commits any other breach of this Agreement or commits any breach of any applicable Software license agreement for any Licensed Program being supported under this Agreement, any contract between Subscriber and Seller or any other obligation of Subscriber to Seller or any of its affiliates.
- D. Should Seller elect to discontinue providing to its customers the type of Software Updates described in this Agreement, Seller shall have the right to discontinue providing the Software FX services (including Updates) for any Licensed Program supported under this Agreement and any other services offered under this Agreement at the end of any one year period and upon at least ninety (90) days written notice to Subscriber. Notwithstanding any other provision of this Agreement, as Subscriber's sole and exclusive remedy Seller will provide a pro-rata refund of Subscriber's annual Software FX Fees collected in advance if Seller elects to discontinue providing Software FX services for any Licensed Program supported under this Agreement. Other Software FX Services may be available for purchase on an item by item basis at a mutually agreed upon price.
- E. Except as provided in Section 7. D. above, under no circumstances (including any termination of this Agreement) shall any fees paid pursuant to this Agreement be refundable once paid by Subscriber.
- F. Cash Basis Law - Subscriber is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City of Overland Park's current budget year. In the event the City of Overland Park does not so budget and appropriate the funds, Subscriber shall send written notice to Seller of the lack of budgeted funds for this Agreement and the parties shall be relieved from all further obligations, without penalty, under this Agreement except that the Subscriber shall pay the Seller for all services rendered under this Agreement prior to the date the written notice is received by Seller.

8. SOFTWARE WARRANTY

Seller warrants, from the date of delivery of a Software Update and during the term of this Agreement, that any Software furnished to Subscriber shall be capable of successfully operating on the designated hardware in accordance with the logic defined in the operator's manuals or other supporting documentation when Subscriber's Designated System is supplied with correct input data. If, on the basis of evidence submitted to Seller within the warranty period, it is shown that any Software does not meet this warranty, Seller, at its option, will either correct the defect or error in the Software free of charge and provide a corrected Software Update, or make available to Subscriber a satisfactory substitute program. The foregoing warranty is exclusive and in lieu of all other warranties whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY, ALL OF WHICH ARE WAIVED IN FULL BY SUBSCRIBER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, OR FOR ANY LOST PROFITS OR REVENUES OR OTHER INDIRECT ECONOMIC PREJUDICE, OR FOR ANY EQUITABLE REIMBURSEMENT OR RECOVERY, ALL OF WHICH ARE HEREBY WAIVED IN FULL BY SUBSCRIBER.**

9. LIMITATION OF LIABILITY

The total liability of Seller, including its subcontractors or suppliers, for all direct or indirect claims of any kind for any loss, cost, expense, liabilities, or damage, whether in contract, warranty, tort (including negligence or infringement), strict liability, equity or otherwise, directly or indirectly arising out of, connected with, or resulting from the performance or non-performance of this Agreement (or any related software license agreement) or from

the furnishing of any good or service pursuant to this Agreement (or any related software license agreement) shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000). IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR INFRINGEMENT), STRICT LIABILITY, EQUITY, OR OTHERWISE, SHALL SELLER OR ITS AFFILIATES, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, VENDORS, SUBCONTRACTORS OR SUPPLIERS, BE DIRECTLY OR INDIRECTLY LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS, INTEREST, ATTORNEYS FEES OR LITIGATION COSTS OR CLAIMS OF SUBSCRIBER'S CUSTOMERS FOR SUCH DAMAGES. The provisions of this Section, Limitation of Liability, shall apply notwithstanding any other provisions of this Agreement (or any related software license agreement). The terms and provisions of this Section shall survive the termination or expiration of this Agreement.

10. CONFIDENTIALITY

- A. Subscriber agrees not to disclose, provide or otherwise make available to any third party any Software or portion thereof, or any technical information provided to Subscriber under the provisions of this Agreement (hereinafter "Confidential Information"), and to hold such materials in confidence using a strict degree of care to protect the Confidential Information from unauthorized disclosure.
- B. Subscriber's obligation with respect to disclosure of Confidential Information shall terminate with respect to any Confidential Information which Subscriber can show was rightfully in its possession prior to the disclosure made by Seller, or which subsequently came into its possession through a third party under no obligation of confidentiality to Seller, or which was independently developed by employees of Subscriber who did not have access to Confidential Information or which becomes a matter of public knowledge other than as a breach of any obligation owed to Seller, or which is disclosed with the prior written permission of Seller.
- C. Notwithstanding the obligations on disclosure and use set forth herein, Subscriber may disclose Confidential Information to third parties insofar as is necessary to satisfy a proper court order, subpoena, litigation discovery demand or administrative or regulatory proceeding order (including, without limitation, a freedom of information request under the Kansas Open Records Act), provided that Subscriber promptly notifies Seller in writing of such order or demand prior to any disclosure and takes advantage of all available and appropriate measures to prevent further disclosure of the Confidential Information. Should the Subscriber receive a request for such information pursuant to the provisions of the Kansas Open Records Act, it shall notify the Seller of the request so that Seller may take such action as it deems necessary to protect its confidential information.
- D. The provisions of this Section shall survive the expiration or termination of this Agreement.

11. INSURANCE REQUIREMENTS

- 11.1** At any time that Seller is sending Seller personnel or agents to provide services on site at a Subscriber location and Seller is not otherwise already providing insurance under the terms of its maintenance agreement or another agreement between Seller and Subscriber, Seller shall secure and maintain insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Seller shall provide certificates of insurance and renewals thereof on forms reasonably approved by the Subscriber. Seller or its insurer shall endeavor to notify the Subscriber at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

- 11.2** Seller, upon receipt of notice of any claim in connection with the contract, shall promptly notify the Subscriber, providing full details thereof, including an estimate of the amount of loss or liability.

Seller shall monitor and promptly notify the Subscriber of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Seller's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Seller shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the Subscriber.

11.3 Commercial General Liability –

| | |
|--|--------------|
| General Aggregate: | \$ 1,000,000 |
| Products-Completed Operations Aggregate: | \$ 1,000,000 |
| Personal & Advertising Injury: | \$ 1,000,000 |
| Each Occurrence: | \$ 1,000,000 |

Policy must include the following conditions:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Broad Form Property Damage

11.4 Automobile Liability –

Policy shall protect Seller against claims for bodily injury and/or property damage arising from the ownership or use of all owned, if any, and hired and/or non-owned vehicles.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section.

11.5 Umbrella / Excess Liability –

| | |
|-------------------|--------------|
| Each Occurrence: | \$ 4,000,000 |
| Annual Aggregate: | \$ 4,000,000 |

The minimum required coverage limit may be satisfied by adding any combination of primary and umbrella/excess per occurrence and aggregate limits so that the sum of both equals the sum of the limits required.

11.6 Workers' Compensation and Employer's Liability –

This insurance shall protect Seller against all claims under applicable state Workers' Compensation laws. Seller shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

| | |
|-------------------------------|-----------|
| <u>Workers' Compensation:</u> | Statutory |
|-------------------------------|-----------|

Employer's Liability:

| | |
|---------------------------|-------------------------|
| Bodily Injury by Accident | \$100,000 each accident |
|---------------------------|-------------------------|

| | |
|--------------------------|-------------------------|
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

11.7 Industry Ratings –

The Subscriber will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of A- or better; and
- (3) Carries at least a Class VII financial rating.

OR

Is a company mutually agreed upon by the Subscriber and Seller.

Certification of insurance coverage in subparagraphs 8.3 & 8.4 above shall be on a Standard Acord Certificate of Liability Insurance form. Unless otherwise specified, Subscriber shall be shown as an additional insured on all general and automobile liability policies of insurance.

11.8 Subcontractors' Insurance. If a part of the Agreement is to be sublet, Seller shall either:

- (1) Cover all subcontractors under its insurance policies;

Or

- (2) Require each subcontractor not so covered to secure insurance which will protect against all applicable hazards or risks of loss as, and in the minimum amounts designated.

Whichever option is chosen, Seller shall indemnify and hold harmless the Subscriber as to any and all damages, claims or losses, including attorney's fees, arising out of the negligent or intentional acts or omissions of its subcontractors as provided in Section 6A of this Agreement.

11.9 The provisions of this Agreement shall not be operative until proof of insurance is submitted to Subscriber.

12. PATENTS, COPYRIGHTS AND TRADEMARKS

- 12.1** Seller shall, at its own expense, hold harmless, defend and indemnify Subscriber against any claim, suit or proceeding (collectively, "Suit"), costs, expenses, damages and liabilities including reasonable attorneys fees, arising out of, resulting from or pertaining to any claim that the hardware, equipment and software furnished by Seller under this Agreement or any part thereof (collectively, "Property") infringes any patent, copyright or trademark or service mark recognized under the laws of the United States of America or any state thereof or that any licensed use of the Property is claimed to violate any statute, rule, regulation or ordinance or defame or slander any person. Subscriber shall give Seller prompt written notice of the receipt of any Suit and the exclusive right, at Seller's option and expense, to defend or settle all Suits. Seller shall pay all damages and costs awarded against Subscriber in connection with such Suit, but shall not be responsible for any compromise made without its written consent. If the use of any Property is enjoined, terminated or modified, then Seller, at its own expense and option, shall either:
- (i) procure for Subscriber the right to continue the use of such Property; or (ii) modify the Property so that it becomes non-infringing; or (iii) provide to Subscriber functionally equivalent property; or (iv) achieve an equitable arrangement with Subscriber in view of the impact such injunction or limitation may have on Subscriber's ability to use the Property for its intended

purpose. The forgoing indemnification does not apply where such Suit is based solely on any modification, change or alteration of the Property made by Subscriber, or upon Subscriber's use of any Property other than as contemplated herein or as otherwise permitted by Seller in writing.

- 12.2** Nothing in this Agreement shall be construed as conferring a right to Subscriber to use in advertising, publicity or otherwise any trademark or trade name of Seller.

13. AFFIRMATIVE ACTION AND OTHER LAWS

- 13.1** Seller agrees that:

- a. Seller shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, color, religion, age, disability, sex, ancestry, national origin or veteran status.
- b. In all solicitations or advertisements for employees, Seller shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- c. If Seller fails to comply with the manner in which the contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto and such failure is not corrected within thirty (30) days after receipt of written notice from the Subscriber, Seller shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Subscriber;
- d. If Seller is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final and cannot be appealed by Seller, Seller shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by Subscriber; and
- e. Seller shall include the provisions of subsections 9.1 (a) through 9.1 (d) in every subcontract or purchase order for maintenance services or maintenance equipment to be provided by Seller to Subscriber under this Agreement so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by Seller if Seller:

- (i) employs fewer than four employees during the term of such contract; or
- (ii) has contracts with Subscriber cumulatively total \$5,000 or less during the fiscal year of the Subscriber.

- 13.2** Seller further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to agreement and to furnish any certification required by any federal, state or local governmental agency in connection therewith

14. FAILURE TO ENFORCE

The failure of either party to enforce, at any time or for any period of time, any provision of this Agreement in accordance with its terms shall not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each and every such provision.

15. GOVERNING LAW AND DISPUTE RESOLUTION

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas excluding its rules pertaining to conflicts of laws. Seller and Subscriber consent to the personal jurisdiction of the state and federal courts in the State of Kansas, which courts shall constitute the exclusive forum for all court proceedings involving the enforcement of this Agreement and the resolution of all Disputes related to the subject of this Agreement, whenever, wherever and however arising, whether at law, in equity or otherwise and whether the Dispute involves an alleged breach of contract, violation of law or tort of any kind.
- B. Each party acknowledges that jury trials are slower and more expensive than court trials without juries, and, considering the complex nature of the technology and other issues which may give rise to Disputes, the parties agree that any court proceedings commenced by or against either party shall be resolved by a court without a jury, and each party waives its right to a jury as to any disputes or claims arising under or relating to this Agreement, whether for breach or enforcement of contract, tort or otherwise, including all Disputes as defined herein.

16. NO THIRD PARTY BENEFICIARIES; ASSIGNMENT

The provisions of this Agreement are solely for the benefit of Subscriber and Seller. No other person or entity is intended to be a beneficiary of nor is entitled to rely upon or enforce any of the provisions of this Agreement or to assert any claim for nonperformance of this Agreement by any party. This Agreement may not be assigned by either Seller or Subscriber without the prior written consent of the other party. The provisions of this Agreement shall inure to the benefit of and be binding upon Subscriber and Seller and their respective permitted successors and permitted assignees (if any).

17. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed validly given upon being hand delivered, or upon receipt if sent by facsimile or if mailed by certified mail, return receipt requested, to Subscriber at the address set forth in Schedule A or to Harris Corporation, RF Communications Division, at 221 Jefferson Ridge Parkway, Lynchburg, VA. 24501, Attention: Software Services Group, or to such other address as either party may designate to the other in writing.

18. ENTIRE AGREEMENT, EXECUTION AND MODIFICATION

- A. This Agreement contains the entire and only agreement between the parties concerning the subject matter hereof, and all prior representations and understandings in connection with the subject matter hereof are superseded and merged herein, and any representation or understanding not incorporated herein shall not be binding upon either party.
- B. No change, modification, ratification, rescission, or waiver of this Agreement or any of the provisions hereof shall be binding upon Seller unless made in writing and signed on its behalf in like manner.
- C. SELLER DOES NOT ASSUME ANY OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THE SOFTWARE OR SERVICES OTHER THAN THOSE EXPRESSLY STATED IN THIS AGREEMENT, AND DOES NOT AUTHORIZE ANY PERSON (INCLUDING SELLER'S NETWORK SOLUTIONS PROVIDERS OR SUBCONTRACTORS OR SUPPLIERS) TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

SELLER:

**HARRIS CORPORATION, acting through its
RF Communications Division**

By: _____

(Print:) _____

(Title:) _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared _____ who holds the office of _____ for HARRIS CORPORATION, acting through its RF Communications Division, to me known to be the identical person who signed the foregoing instrument and acknowledged to me that he/she voluntarily executed the same as on behalf of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires

Notary Public

Harris Corporation, RF Communications Division

221 Jefferson Ridge Parkway Lynchburg, VA. 24501

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Michael R. Santos
Deputy City Attorney

**SOFTWARE FX
AGREEMENT
SCHEDULE A**

1. *[Intentionally Omitted]*

2. *Designated System.*

The Designated System(s) for which the Software FX Agreement will apply is (are):

| System Name | System Classification | System Location |
|-----------------------|-----------------------|-------------------|
| City of Overland Park | EDACS Simulcast | Overland Park, KS |

The Designated System covered by this Agreement, including the items of equipment comprising the Designated System, is described in detail in the System Maintenance Agreement of even date herewith between Seller and Subscriber.

3. *Software FX Fees*

The Software FX Fees for the above Designated System(s) are as follows and apply to each calendar year (January 1 through December 31) set forth below:

| System Name | Software FX Option Number | System Fee |
|-----------------------|---------------------------|-------------------------------|
| City of Overland Park | SSSV1E | \$50,000.00 – year (1) (2009) |
| | | \$40,000.00 - year (2) (2010) |
| | | \$30,000.00 - year (3) (2011) |
| | | \$20,000.00 - year (4) (2012) |
| | | \$10,000.00 - year (5) (2013) |

Subscriber's subsequent years' Software FX Fees will be determined in accordance with Section 5.A. of the Agreement.

4. *Fiscal Year Billing Option*

If Subscriber requests billing for the first and subsequent years' Software FX Fees coincident with Subscriber's fiscal year, please indicate the fiscal year end date:

m m d d

If this option is selected, Subscriber's initial Software FX term will be from the effective date shown in Section 1 of this Schedule A through the next fiscal year end date and the first-year Software FX Fee will be prorated accordingly.

5. *Designated Subscriber Contact(s)*

A. All notices regarding the Software FX Agreement to which this Schedule A is attached are to be sent to Harris Corporation, RF Communications Division, at the address set forth in Section 17 of this Agreement and to the City of Overland Park, Kansas at 12400 Foster, Overland Park, KS, 66213, Attn: Police Chief John Douglas.

B. All Software Updates to be provided by Seller to Subscriber under this Agreement are to be sent to (if different than 5.A. above):

Contact's Name: As mutually agreed upon

Company Name:

Title:

Address:

(Do not use P.O. Boxes)

Telephone:

FAX No.