

## Staff Summary Report

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**Council Meeting Date:** 1-22-2009

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request to award a one-year contract with four, one-year renewal options to Harris Corporation for the purchase of tracking hardware, software and maintenance for use by the Police Department.

**DOCUMENT NAME:** 20090122fsta11

**PURCHASES (1004-01)**

**SUPPORTING DOCS:** Yes

**COMMENTS:** (RFP 09-071) Total cost for this contract shall not exceed \$401,000.

**PREPARED BY:** Tony Allen, Procurement Officer, 480-350-8548

**REVIEWED BY:** Michael Greene, CPM, Central Services Administrator, 480-350-8516  
Tom Ryff, Police Chief, 480-350-8214  
Kim Hale, Commander – Special Investigations, 480-350-8322

**LEGAL REVIEW AS  
TO CONTRACT FORM**

**ONLY:** Bill Amato, Police Legal Advisor, 480-350-8610

**FISCAL NOTE:** Sufficient funds have been appropriated in 5509199-7511 and 2222 for the anticipated expenditures in the current fiscal year.

**RECOMMENDATION:** Award the contract.

**ADDITIONAL INFO:** The City of Tempe issued a Request for Proposal for a tracking hardware and software system. Harris Corporation was the only responding firm. An evaluation committee comprised of Police and Procurement staff reviewed the proposal submitted by Harris and determined that the system meets all requirements of the RFP. It is recommended of the committee that a contract be awarded to Harris Corporation.

**HARRIS** Corporation  
Government Communication Systems Division  
Terms and Conditions of Sale  
For  
Wireless Equipment, Software and Services

**1. DEFINITIONS**

In addition to the terms defined elsewhere the following terms used herein have the following meanings:

- A. "Agreement" means the instrument of contracting; such as a Purchase Order, or other such designation which these terms and conditions of sale for Wireless Equipment, Software and Services are incorporated, all as acknowledged by Harris on its standard acknowledgement form;
- B. "Customer" means the purchaser of Equipment, Software, or Services from Harris;
- C. "Date of Acceptance" means the date when the Customer receives an item of Equipment, Software and/or Services unless Customer otherwise notifies Harris in writing that the Equipment, Software and/or Services was delivered in a defective condition.
- D. "Equipment" means any hardware, including components, and excludes any Software or Services;
- E. "Harris" means Harris Corporation, acting through its Government Communications Systems Division;
- F. "Maintenance Agreement" means a separate agreement for maintenance of the items procured hereunder; such services are not included in this Agreement
- G. "Purchase Order" means the Customer's purchase order as acknowledged by Harris on its standard acknowledgement form;
- H. "Purchase Price" means the purchase price as identified in the Purchase Order;
- I. "Quote" means the price quotation of Harris itemizing the purchase price and includes all exhibits referred to within such Quote, including but not limited to the technical proposal, technical specifications, scope of work, schedule, the Agreement and any maintenance agreement specifically included in the purchase price;
- J. "Services" means, training, maintenance support, or other services to be provided to Customer as part of the Agreement;
- K. "Software" means software and firmware, including all copies provided to Customer.

**2. PROPOSAL/QUOTE VALIDITY**

Prices quoted are binding upon Harris for 30 days from the date of Quote. At expiration, Harris reserves the right to adjust its prices or extend the validity period.

**3. ACCEPTANCE – MODIFICATION OF TERMS.**

This Agreement constitutes Customer's acceptance of Harris' offer and such acceptance is expressly made conditional on Customer's assent to the terms and conditions contained in this Agreement. The Agreement will be deemed accepted by Customer upon the first to occur (i) Customer's issuance of the Purchase Order; or (ii) Harris' commencement of performance under the Agreement. In either such event any additional or different terms proposed by Customer are rejected unless expressly approved in writing by Harris. No communication from Customer that in any way differs from or adds to the Agreement, irrespective of whether or not Harris seasonably objects thereto, will be binding upon Harris unless such different or additional terms are incorporated into a writing signed by both Harris and Customer, making express reference to the Agreement.

**4. TAXES**

All prices are exclusive of all sales, use, excise, and other taxes, duties, or charges. Unless evidence of tax exempt status is provided by Customer, Customer will pay, or upon receipt of invoice from Harris, will reimburse Harris within a reasonable time after receipt of notification for, all such taxes or charges levied or imposed on Customer, or required to be collected by Harris as a result of this transaction or any part thereof.

**5. CHANGES/CANCELLATION**

Except as otherwise provided herein, change and/or cancellation of a Purchase Order in whole or in part by Customer will be effective only with specific written approval of Harris and may be subject to Harris' reasonable change and/or cancellation charges.

**6. DELIVERY**

Harris shall have the right to make, and Customer agrees to accept, shipments in more than one lot, and payment for each lot shall be due accordingly.

**7. FREIGHT CHARGES AND TRANSPORTATION INSURANCE**

Unless otherwise stated in the Agreement, all prices and terms are F.O.B. Destination and are inclusive of freight charges.

**8. TITLE AND RISK OF LOSS**

Title to and risk of loss for Equipment and Software media sold under the Agreement shall pass to Customer at the F.O.B. Destination

## 9. PAYMENT TERMS

- A. Payment for an invoice is due within thirty (30) days from the date of the invoice. Late payment shall be accrued interest at either the lower of one and half percent per month or the highest rate allowed by law, to the outstanding balance due.
- (i) Domestic Purchase Orders (not including Maintenance Agreements) are for shipments of Equipment, Software and/or Services to be delivered or Services to be performed within the continental United States and Canada. Harris will submit an invoice within 30 days of the Date of Acceptance of an individual delivery of Equipment, Software or performance of Services as identified in the Purchase Orders.
  - (ii) Domestic Purchase Orders for Maintenance Agreements require full payment of the Purchase Price prior to the start of the term of the Maintenance Agreement or Harris' obligation to perform.
  - (iii) International Purchase Orders are for shipments of Equipment, Software and/or Services to be performed outside the continental United States and Canada. Harris will submit an invoice after it has receipt of an approved export license; Harris will not ship any Equipment, Software nor perform any Services under the Purchase Order until it receives full payment of the Purchase Price of the Purchase Order.

## 10. ANNUAL MAINTENANCE AGREEMENT

Upon expiration of warranty period, Customer can execute a separate maintenance agreement with Harris for Equipment and/or Software. Such maintenance agreements are available for a percentage of the original Purchase Prices of the Equipment and/or Software. Annual maintenance agreements include:

- A. Customer telephone support during normal business hours (Monday through Friday, Eastern Standard Time).
- B. Additional twelve (12) month warranty on Equipment, with respect to the Equipment Maintenance Agreement.
- C. For Software maintenance agreements it includes notification of and free access to Software upgrades as defined in the maintenance agreement.

## 11. EQUIPMENT RETURN POLICY

- A. Equipment Damaged in Shipment. Upon receipt of shipments, Customer must open and inspect all boxes immediately for possible freight damage. If damage is found, Customer must notify the delivering carrier within 48 hours and request an inspection. After notifying the freight carrier, Customer promptly shall contact Harris for further instructions. Damaged Equipment shall not be returned without Harris' prior authorization.
- B. Items Shipped in Error. If the Equipment Customer receives is not what the Customer ordered, Customer will promptly notify the Harris responsible for the fulfillment of the Purchase Order. Customer agrees not to discard packing material. Harris will issue a return authorization.
- C. Defective Equipment. If the Equipment Customer receives is defective, it is covered under the Harris or manufacturer's standard equipment warranty. Upon discovery of a warranty problem, Customer promptly must contact the Harris for warranty support. Customer agrees not to return the Equipment until a service representative has issued a return authorization, including a form Customer must fill out describing the nature of the Equipment defect.
- D. Other Reasons. If Customer needs to return Equipment for other reasons, Customer must contact Harris for a return authorization. Harris' customer service representative will require a clear statement of the reason for the return request. Upon approval of Customer's request, a return authorization will be issued. Customer agrees not to return any Equipment without a return authorization. Equipment being returned is subject to restocking and other charges. CUSTOM MANUFACTURED OR SPECIAL ORDER ITEMS ARE NOT RETURNABLE.
- E. Upon Receipt of a Return Authorization. Return authorization numbers must appear on each individual package being returned. Customer is responsible for insuring the return for the full invoice amount and all shipping costs. Harris may refuse shipments of Equipment returned without return authorization numbers. All Equipment being returned for credit must be returned in a timely manner and in good condition. Harris will inspect all Equipment returned. If there is damage, wear and tear, or if there are missing components or accessories, Harris may charge Customer for repair/refurbishment.

## 12. LIMITED WARRANTY

- A. Harris warrants the Equipment and Software ordered hereunder as of the Date of Acceptance to be substantially free from defects in material and workmanship. Harris' liability under this Limited Warranty shall commence on the Date of Acceptance of the individual item of Equipment and Software and terminate 12 months thereafter. Written notice of any defects shall be given to Harris upon discovery and Harris shall promptly correct such defects by repair or replacement, at its option, without charge, either FOB Harris' plant or service in the field. Harris uses new and reconditioned parts to satisfy warranty repairs and replacements under the terms of this warranty. Defective articles shall not be returned to the Harris' factory without the prior written authorization of the Harris. Call 1-800-358-5297 to obtain a Return Material Authorization (RMA) number. Harris shall have the right of final determination as to the existence and cause of any claimed defect.

Specifically excluded from the terms of this Limited Warranty are any defects which occur as a result of:

- (i) Acts of God.
- (ii) Physical impact, crash or foreign object damage.
- (iii) Improper maintenance, storage, modification or alteration by the Customer or its Customer.
- (iv) The Customer's or its Customer operation of the items delivered under this Agreement with any accessory, equipment or part not specifically approved by the Harris unless the Customer furnishes clear and convincing evidence that such accessory, equipment, or part was not a cause of the defect.
- (v) Normal wear and tear. (The Customer recognizes that certain parts have a limited service life and will wear out through normal use).
- (vi) Equipment or Software subjected to misuse or detrimental exposure or negligence;
- (v) Defects caused by improper storage, use, installation or maintenance;

Note: Harris is not responsible under this provision for defects with respect to items not provided by Harris or its subcontractors.

- B. For purposes of Harris' warranties for Equipment and Software media, a defect is defined as a failure of any unit or component manufactured or supplied by Harris that is not attributable to unauthorized modification or alteration, lack of care in operation, maintenance or handling. The written notice of claim of defect must include a description of the defect with detailed information, which will enable Harris to identify the defect and determine its probable cause. Components that Customer claims to be defective must be available to Harris for inspection and test. No defective Equipment or parts are to be returned without first receiving written authorization and instructions from Harris. Customs clearance for all replacement parts under the warranty or otherwise will be Customer's sole responsibility.
- C. CLAIMS UNDER ANY OF THE FOREGOING WARRANTIES ARE WAIVED UNLESS MADE WITHIN THE EQUIPMENT WARRANTY PERIOD, IN THE CASE OF EQUIPMENT, OR WITHIN THE SOFTWARE WARRANTY PERIOD, IN THE CASE OF SOFTWARE MEDIA. NO PERSON IS AUTHORIZED TO GIVE ANY OTHER WARRANTIES OR TO ASSUME ANY OTHER LIABILITIES ON HARRIS' BEHALF, UNLESS MADE OR ASSUMED IN WRITING BY A DULY AUTHORIZED REPRESENTATIVE OF HARRIS.
- D. HARRIS' LIABILITY FOR BREACH OF ANY OR ALL WARRANTIES FOR EQUIPMENT, SOFTWARE MEDIA, SERVICES AND LICENSED HARRIS PROGRAMS IS EXPRESSLY LIMITED TO THE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE OF SUCH DEFECTIVE EQUIPMENT OR SOFTWARE, LESS A REASONABLE CHARGE FOR USE AND IN NO EVENT WILL HARRIS OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIALS OR WORKMANSHIP. HARRIS WILL NOT BE REQUIRED TO REPAIR, REPLACE, OR REFUND THE PURCHASE PRICE OF EQUIPMENT OR SOFTWARE WHICH HAVE BEEN SUBJECT TO NEGLIGENCE, ACCIDENT, OR IMPROPER USE, OR WHICH HAVE BEEN ALTERED OTHER THAN BY AUTHORIZED HARRIS PERSONNEL.
- E. THIS LIMITED WARRANTY CONSTITUTES HARRIS' SOLE AND EXCLUSIVE LIABILITY HEREUNDER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE OR NON-CONFORMING EQUIPMENT, SERVICES, AND SOFTWARE. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE), WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY OR CONDITION ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR CUSTOM OR USAGE OF TRADE. CUSTOMER AGREES THAT NO CIRCUMSTANCE CAUSING CUSTOMER EXCLUSIVE AND LIMITED REMEDIES TO FAIL IN THEIR ESSENTIAL PURPOSE SHALL INCREASE OR EXTEND ANY HARRIS WARRANTY. THE TOTAL LIABILITY OF HARRIS AND ITS LICENSORS UNDER THIS WARRANTY SHALL IN ANY EVENT BE SUBJECT TO THE LIMITATIONS IN THIS SECTION.

### 13. REPAIRS

To repair any Wireless products after the 12 month warranty has expired, call 1-800-358-5297 to obtain a Return Material Authorization (RMA) number and an estimated cost for repair.

- (i) **Repair Policy** - To affect a repair on a Wireless Product, the Equipment and/or Software should be returned to the Harris' factory with a written description of the failure mode. Out of warranty repairs apply to any equipment and/or software whose standard 12- month warranty has expired, no maintenance agreement has been purchased and paid for, and/or any equipment and/or software damaged in a manner not covered by the standard warranty, including any defects which occur as identified under 1 above.

Equipment and/or Software should not be returned to the Harris' factory without the prior written authorization of the Harris. Call 1-800-358-5297 to obtain a Return Material Authorization (RMA) number.

- (ii) **Support Policy** - Harris provides free help desk support throughout the warranty period and maintenance agreement of purchased Wireless Equipment and/or Software. Technical support is available during normal business hours EST, Monday through Friday via the help desk support center at 1-800-358-5297.

### 14. SOFTWARE LICENSE

- A. Subject to full payment of the Purchase Price by Customer, Harris grants to Customer a nontransferable (except as expressly provided herein), nonexclusive license to use the Software (software, firmware, and documentation) in connection with use of the Equipment purchased hereunder. The Software furnished with the Equipment shall be of the latest generation available at the time of shipment of the Equipment. Harris is under no obligation to supply updates to the Software except where expressly so stated in writing.
- B. This license is limited to object code programs and related documentation only and does not apply to any of the corresponding source code or program listings.
- C. Customer acknowledges that Harris (or its licensor) has valuable property rights in the Software, and the Software will continue to be the sole and exclusive property of Harris or its licensor. Customer will obtain no title to the Software. All rights in patents, copyrights and trade secrets in relation to the Software shall continue to be vested in Harris or its licensor.
  - (i) Customer shall keep the Software confidential by affording access to the Software only to those of its employees, agents, or consultants having a need to know and shall have such individuals agree in writing to the obligations contained herein. In addition, Customer shall employ reasonable measures to prevent any unauthorized use, copying, publishing, reproducing, or disclosing of the Software and shall treat such with not lesser care than its own confidential information.
    - a). The Software may be used only in conjunction with the Equipment purchased hereunder. Customer may not rent, lease, transfer, network, display, or distribute the Software, nor may Customer reverse engineer, disassemble, decompile, modify, alter, translate, or adapt the Software or create any derivative thereof, except where expressly stated in writing.
    - b). Customer agrees that a violation of this Agreement would cause irreparable injury to Harris or its licensor, and that Harris or its licensor shall be entitled, in addition to any other rights and remedies it may have, at law or in equity, to an injunction enjoining and restraining Customer from doing or continuing to do any such act and any other violations or threatened violations of this Agreement. Furthermore, Customer agrees that if Harris or its licensor should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

If Customer sells or otherwise disposes of Customer-owned media on which any Software is fixed, such media must be erased before any sale or disposal

## 15. DISCONTINUED AVAILABILITY/LAST TIME BUY

Customer acknowledges that Harris has made no representation about the continued availability of the Equipment and Software listed in the Agreement. Harris reserves the right, in its absolute discretion, with or without notice, without incurring any liability to Customer or otherwise, whether in contract or tort, to discontinue manufacturing or selling any of the Equipment and Software listed in the Agreement at any time or from time to time. Harris may within its discretion provide Customer with an opportunity to purchase such quantities of the Equipment or Software as Customer estimates it may need ("last time buy") within thirty (30) days of notice. Customer's last time buy rights are limited to products available in Harris' inventory at the time of Customer's request. Harris will provide warranty services and make spare parts available to Customer for a period of one (1) year after notice by Harris to Customer that the Equipment has been discontinued or for a period of ninety (90) days after notice to Customer that the Software has been discontinued.

## 16. INTELLECTUAL PROPERTY INDEMNIFICATION

(I) In the event any Equipment to be furnished under this Agreement is not to be made in accordance with drawings, samples or manufacturing specifications designated by Customer, but rather is the design of Harris, Harris agrees that it shall, at its own expense and at its option, defend or settle any claim, suit, or proceeding brought against Customer or any customer of Customer, based on an allegation that the Equipment furnished under this Agreement constitutes a direct or a contributory infringement of any claim of any United States patent, mask work, copyright or any other intellectual property right. This obligation shall be effective only if Customer shall have made all payments then due and if Harris is notified of said allegation promptly in writing and given authority, information, and assistance for the settlement or defense of said claim, suit, or proceeding. Harris shall pay all damages and costs assessed in such suit or proceedings. In the event of a final adjudication by a court of competent jurisdiction that its Equipment or any part thereof infringes or violates any third party intellectual property right or if the use or sale thereof is enjoined, or if the provisions of any negotiated settlement Agreement prohibit the use of the product, Harris shall at its sole option and its own expense, either: (a) Procure for Customer the right to continue using the Equipment; or (b) Replace it with a substantially equivalent non-infringing equipment; or (c) Modify it so it becomes non-infringing but substantially equivalent; or (d) If none of the above is reasonably available, terminate the Customer's right to use the Equipment and return to the Customer a pro-rata portion of the price originally paid by Customer to Harris represented by the remaining useful life of the Equipment as a percentage of the total useful life.

The foregoing indemnity does not apply to the following: (1) Infringement by a combination of Equipment furnished under this Agreement with other equipment not furnished hereunder unless Harris is a contributory infringer; (2) Infringement resulting from changes or modifications made to or from the Equipment by the Customer; (3) Any settlements of a claim, suit, or proceeding made without Harris' written consent; and, (4) Any Equipment to be furnished under this Agreement which is to be delivered to the United States Government.

The foregoing states the entire liability of Harris with respect to infringement or violation of third party intellectual property rights in connection with Equipment furnished under this Agreement.

(II) In the event any Equipment to be furnished under this Agreement is to be made in accordance with drawings, samples or manufacturing specifications designated by Customer and is not the design of Harris, Customer agrees to defend, indemnify and hold Harris harmless to the same extent and subject to the same requirements as set forth in Harris' indemnification of Customer as set forth in (I) above.

## 17. TECHNICAL DATA AND INVENTION

- A. Unless specifically agreed to by Harris and identified and priced in the Agreement as a separate item or items to be delivered by Harris (and in that event, except so identified and priced), the sale of Equipment, Software and Services under the Agreement confers on Customer no right in, license under, access to, or entitlement of any kind to any of Harris' technical data including, but not limited to design, process technology, software and drawings, or to any of Harris' inventions (whether or not patentable), irrespective of whether any such technical data or invention or any portion thereof arose out of work performed under or in connection with the Agreement, and irrespective of whether Customer has paid or is obligated to pay Harris for any part of the design or development of the Equipment, Software or Services.
- B. Harris will not be obliged to safeguard or hold confidential any data whether technical or otherwise, furnished by Customer for Harris' performance of the Agreement unless (and only to the extent that) Customer and Harris have entered into a separate written confidentiality agreement.
- C. Customer shall not violate Harris' copyright of documents or Software or without Harris' written permission disclose Harris' confidential or proprietary data to others.

## 18. EXCUSABLE DELAY

- A. Harris will be excused from performance under the Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including, but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of public enemy or terrorism, labor difficulties, failure or delay in delivery by Harris' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of nature, Customer's fault or negligence or where compliance with any applicable environmental law or regulation by Harris is not reasonably technologically or economically feasible, or would otherwise require Harris to change its manufacturing process.
- B. In the event of an excusable delay, Harris will make reasonable efforts to notify Customer of the nature and extent of such delay and (1) Harris will be entitled to a schedule an extension on at least a day-for-day basis, and (2) if the delay is caused by Customer's fault or negligence, Harris will be entitled to an equitable adjustment in price under the Agreement.

## 19. EXPORT AND RE-EXPORT RESTRICTIONS

Customer acknowledges that the Equipment and Software sold or licensed to it by Harris under this Agreement may be subject to export controls under the laws of the United States or Canada. Customer will not export or re-export the Equipment or Software, technology, or products manufactured from the technology that are the subject of the Agreement in violation of the export control laws of the United States or Canada. Customer shall defend, indemnify and hold Harris harmless from and against any loss, damage, or liability arising out of Customer's failure to comply with this Section. The Customer shall supply to the Harris on a timely basis all necessary information and documentation requested by Harris in order to permit the Harris to export the Equipment, Software and/or Services with respect to any Purchase Order issued by the Customer hereunder, in accordance with the terms of this Agreement.

## 20. COMPLIANCE WITH WASTE RECYCLING LAWS

Customer acknowledges and agrees that the supply of the Equipment by Harris to the Customer, and the resale or re-supply of the Equipment by the Customer, may give rise to obligations for Harris and the Customer under the Environmental Laws as hereinafter defined. The Customer shall be responsible for the collection, recycling, reuse and disposal of the Equipment in compliance with the Environmental Laws. "Environmental Laws" means any law or regulation in any jurisdiction worldwide applicable to the Agreement and these terms and includes but it is not limited to the recycling or treatment of waste equipment including the laws implementing the WEEE Directive as defined hereinafter. "WEEE Directive" means the EU Directive on Waste Electrical Equipment and shall include any and all national laws and regulations, whether civil, criminal, administrative, in any jurisdiction giving effect to that meaning including, but limited to, statutes and subordinate legislation, ordinances permits, common law, local laws, judgments, and any notices, orders, directions, instructions or decisions of any competent authority. Harris may arrange for services, paid for by Customer, to recycle or dispose of Harris manufactured products in compliance with the Environmental Laws. The Customer shall indemnify and hold Harris and each of its affiliates harmless against all expenses, costs, claims, liabilities or damage of any nature incurred by any of them relating to the collection, recycling, reuse and disposal of any Equipment or otherwise arising in connection with their respective obligations under the Environmental Laws, or by reason of any failure or alleged failure by the Customer to comply with its obligations under the Environmental Laws. The Customer shall provide Harris with such compliance plans or other documents and information that Harris may reasonably request to enable Harris and its affiliates to verify and prove to any enforcement agency the compliance by the Customer and Harris of their respective obligations under this Section and the Environmental Laws.

## 21. LIMITATION OF LIABILITY

CUSTOMER IS EXPRESSLY NOTIFIED THAT UNDER NO CIRCUMSTANCES SHALL HARRIS BE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY PARTY, INCLUDING THIRD PARTIES, EVEN IF SUCH DAMAGES ARE FORESEEABLE, OR (B) LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR LOSS OF USE EVEN IF HARRIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY TO ANY CLAIM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY), IN NO EVENT SHALL HARRIS' LIABILITY TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE ACTUAL PURCHASE PRICE PAID BY CUSTOMER FOR ANY EQUIPMENT, SOFTWARE OR SERVICES SUPPLIED HEREUNDER. THIS SECTION SHALL SURVIVE THE TERM OR EXPIRATION OF THIS AGREEMENT. CUSTOMER AGREES TO INDEMNIFY HARRIS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO CUSTOMER'S INSTALLATION, OPERATION, OR USE OF THE EQUIPMENT OR SOFTWARE.

## 22. APPLICABLE LAW, VENUE, AND JURISDICTION

The Agreement, and any disputes related thereto, shall be governed by and interpreted in accordance with the laws of the State of Florida, USA, regardless of any conflict of law principles requiring the application of any other law. The parties specifically exclude the application of the United Nations Convention on Contracts for the International Sale of Goods to the Agreement, to the contractual relationship created under the Agreement, and to the construction, validity, enforcement, and interpretation of the Agreement. The parties agree that the exclusive venue for any action arising out of or related to the Agreement shall be in the courts with the appropriate jurisdiction located in Brevard County, Florida, and each party irrevocably submits to the jurisdiction of each such court in any such action and waives any objection it may now or hereafter have to venue or personal jurisdiction in each such court. The prevailing party in any action related to the dispute or interpretation of the Agreement shall be entitled to recover its reasonable attorneys fees incurred in pursuing the action, including those fees incurred throughout all bankruptcy and appellate proceedings.

## 23. JURY WAIVER

CUSTOMER AND HARRIS FURTHER AGREE, TO THE EXTENT PERMITTED BY LAW, TO WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ANY ACTION RELATING TO THE DISPUTE OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE ITS TERMS AND THAT SUCH WAIVER IS MATERIAL CONSIDERATION FOR THE SALE AND PURCHASE CONTEMPLATED HEREBY.

## 24. ASSUMPTION OF RISK

Each party hereto acknowledges (a) the risks of its undertakings hereunder, (b) the uncertainty of the benefits and obligations hereunder, and (c) its assumption of such risks and uncertainty. Each party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such party's opinion shall be the basis of that party's decision to enter into the Agreement.

## 25. RELIANCE ON COUNSEL AND OTHER ADVISORS

Each party has consulted such legal, financial, technical or other experts it deems necessary or desirable before entering into the Agreement. Each party represents and warrants that it has read, knows, understands and agrees with the terms of the Agreement, and the Agreement shall not be construed against either party as the drafter.

## 26. COMPLIANCE WITH APPLICABLE LAWS

Customer warrants that Customer shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to such party's performance hereunder, and shall promptly act to correct any noncompliance once identified.

## 27. GENERAL PROVISIONS

- A. **Publicity.** Neither party will, without the prior written consent of the other party: (a) make any news release, public announcement, denial or confirmation of this Agreement or its subject matter; or (b) in any manner advertise or publish the fact of this Agreement.
- B. **Default.** If Customer defaults in any of Customer's obligations hereunder, including, but not limiting to failure to pay all sums when due, Customer will be liable for all costs to Harris resulting from Harris' attempt to enforce its rights hereunder, including, but not limited to collection agency fees, attorney fees, court costs, etc.

- C. Assignment. Customer shall not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights in violation of this Section is null and void.
- D. Enforceability. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will, to the extent of such invalidity, illegality, or unenforceability, be severed, but without in any way affecting the remainder of such provision or any other provision contained herein, all of which shall continue in full force and effect.
- E. No Waiver. Waiver or failure by Harris to enforce any of the terms or conditions hereunder or the delay in exercise of any of its remedies or any terms or condition herein, will not be a future waiver of any such right, or be a waiver of any other term, condition or remedy contained herein.
- F. Notices. All notices must be in writing and will be effective when received by (1) personal delivery, (2) registered, certified, or nationally recognized overnight mail, proof of receipt requested, and (3) facsimile, if confirmed within three (3) business days by one of the other methods herein, at the addresses or facsimile numbers indicated or to such other addresses or facsimile numbers as the parties may specify by giving notice pursuant hereto. A copy of all notices must be sent to Harris Corporation, PO Box 37, MS: R5/11A, Melbourne, FL 32902 Attention: Contracts Manager.
- G. English Language. The Parties confirm that it is their wish that this Agreement, as well as any other documents relating hereto including notices, have been and shall be drawn up in English only.
- H. GSA: All purchase orders under GSA Schedule #GS-35F-0283J are subject to the GSA Terms and Conditions which will supersede all other Terms and Conditions provided.

## 28. CLAUSES INCORPORATED BY REFERENCE

The following Federal Acquisition Regulations/Defense Federal Acquisition Supplement ("FAR/DFARS") clauses are incorporated herein by reference, to the extent these clauses are applicable, with the same force and effect as if they are included in full text: 52.219-8 Utilization of Small Business Concerns, 52.222-26 Equal Opportunity, 52.222-35 Equal Opportunity for Special Disabled Veterans and Veterans of the Vietnam Era and other eligible Veterans, 52.222-36 Affirmative Action for Workers With Disabilities, 52.222-39 Notification of Employees Rights Concerning Payment of Union Dues or Fees, 52.247-64 Preference For Privately Owned U.S. Flag Commercial Vessels, 252.225-7014 Preference for Domestic Specialty Metals, Alternate I, 252.247-7023 Transportation of Supplies by Sea, and 252.247-7024 Notification of Transportation of Supplies by Sea.

## 29. ENTIRE AGREEMENT

The Agreement supersedes all previous proposals, negotiations, conversations, and understandings, whether oral or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms, will be binding unless made in writing and signed by duly authorized representatives of both parties.

