

**SCHOOL BOARD OF BREVARD COUNTY, FLORIDA  
BOARD AGENDA ITEM – June 14, 2022**

DEPARTMENT/SCHOOL INITIATED AGREEMENT

22-888-A-MC

Horizon Software License and Support -OneSource

<input type="checkbox"/> (BW) Bids Waived <input checked="" type="checkbox"/> (A) Agreement
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REQUESTOR: Food and Nutrition Services

Legal Review Required:  Yes     No

Standard Template Used with No Changes:  Yes     No

Standard Template Type: N/A

VENDOR NAME	AMOUNT AWARDED	REQUIRED PRODUCTS/SERVICES
Horizon Software International, LLC	Variable	OneSource and On-Site Services
<b>Total</b>	Variable Muti Year Agreement	

<input type="checkbox"/> Contract Renewal	Modified Contract Amount	Variable \$
<input type="checkbox"/> Recurring Contract	Previous Contract Amount	Variable \$
<input checked="" type="checkbox"/> Modified Contract	Variance	N/A

**PRICE INCREASE / DECREASE EXPLANATION:** The costs of goods and services have been significantly impacted by the pandemic. Vendor operating costs have increased due to the rising costs of the technology labor market. The last price increase was 2013-2014.

**DISCUSSION:**

Horizon OneSource is a comprehensive software package that has provided both front-of-the-house and back-of-the-house support to the Food and Nutrition Services cafeteria operation since 2007.

A vendor-provided agreement has been used and approved by Legal Services on May 12, 2022.

**CONTRACT TERM:**

The initial contract term shall commence on July 1, 2022 and continue through June 30, 2027.

**RECOMMENDATION:**

It is the recommendation of Robin Novelli, Chief Operating Officer, and Kevin Thornton, Director of Food & Nutrition Services to approve the price increase as requested for Horizon Software International, LLC.

**AUTHORITY FOR ACTION:**

Florida Administrative Code 6A-1.012

## Software License and Support Agreement

This Software License and Support Agreement (this "Agreement") is entered into as of the 1 day of July, 2022 (the "Effective Date") between The School Board of Brevard County, Florida, a K-12 school district, having a place of business at 2700 Judge Fran Jamieson Way, Viera, FL 32940 ("You" or "Customer") and Horizon Software International, LLC, a Georgia limited liability company having its principal offices at 2850 Premiere Parkway, Suite #100, Duluth, Georgia 30097 ("Horizon").

### 1. Definitions

In addition to capitalized terms later defined herein, the following capitalized terms shall have the following meanings:

- (a) "Deliverables" means the Products and the Services (as those terms are defined below).
- (b) "Documentation" means the user documentation and any other operating, training, and reference manuals relating to the use of the Software, as supplied by Horizon to You, including any modifications and derivative works thereof.
- (c) "Error" means a substantial reproducible failure of the Software to conform to the specifications set forth in the applicable end user Documentation.
- (d) "Error Correction" means either a modification or addition to, or deletion from the Software that, when made to such Software, establishes substantial conformity of such Software to the specifications therefor as set forth in the applicable end user Documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of such Error on you and is indicated by a change in the third digit of a version number, e.g. from 5.0.1 to 5.0.2.
- (e) "Invoice" means an invoice issued by Horizon to you under this Agreement.
- (f) "Major Release" means a revision to the Software that is not separately marketed by Horizon as indicated by a change in the first digit of a version number, e.g., from 4.0.0 to 5.0.0.
- (g) "Minor Release" means a revision to the Software which is not separately marketed by Horizon as indicated by a change in the second digit, e.g., from 4.0.0 to 4.1.0.
- (h) "Products" means the Software, Documentation and any hardware purchased by you from Horizon (the "Hardware").
- (i) "Release" means either a Major Release or a Minor Release.
- (j) "Services" means the Support Services, Training Services, Installation Services, Additional Services (if any are ordered by you), and any other services provided by Horizon to you.
- (k) "Software" means the program with which this license is distributed which may include third party software.
- (l) "Users" mean your employees who are permitted to use the Software as described in Section 2 below.
- (m) "You" or "you" means the hospital, retirement community, college, university, school district, corporation, partnership, limited liability company, limited partnership or other entity or individual who has been invoiced and purchased the license to use Software.

### 2. License of Software

2.1. Subject to the terms and conditions of this Agreement, including, without limitation, the payment of any License Fees and any additional restrictions set forth on the applicable Invoice for the Software, Horizon hereby grants to you a non-exclusive, non-transferable license during the Initial Term and any Renewal Terms

- (a) to use, and allow Users to use, the Software in executable code form only, with the number of copies designated on the Invoice, for your internal, in-house purposes only to process your data for transaction and reporting purposes;
- (b) to make a single copy of the Software solely for backup or archival purposes and not for operational use; and
- (c) to use the Documentation as reasonably necessary for your internal use related to the Software license granted under subsection (a) above.

2.2. You may only install the copy of the Software on a single server which may be accessed and used by Users via LAN workstations owned or leased by you. A copy of the Software shall be considered in "use" (i) when it is loaded into the temporary memory (i.e., RAM) of a computer, or (ii) when it is installed into the permanent memory (e.g., hard disk or CD-ROM) of a computer.

2.3. Horizon employs authorization devices that enable the use of the Software ("Registration Codes"). Upon delivery, Horizon will supply you with a temporary Registration Code. Upon full payment of the fees invoiced to you by Horizon, Horizon will supply you with a corresponding permanent Registration Code. Horizon administers the generation and distribution of the Registration Codes, which administration may be modified by Horizon from time to time. You shall not modify any Registration Code or other security device used by Horizon to protect the Software or attempt to bypass or circumvent such Registration Code.

### **3. Reservation of Rights**

Horizon reserves all rights not expressly granted herein. You and Users may use the Software and Documentation only to process your own data and may not (i) use, or permit any third party to use, the Software or Documentation for time-sharing, rental, or service bureau purposes; (ii) copy, modify, sublicense, distribute, transfer, transmit, translate, the Software or Documentation; or (iii) reverse engineer, decompile, disassemble or obtain possession of any source code or other technical material relating to the Software except only and to the extent otherwise permitted by applicable law. In no event will any User have any right whatsoever to sublicense, distribute, transfer, transmit or otherwise make available any Software or Documentation or such User's use thereof. You shall not remove any proprietary notices on the Software and Documentation and shall affix all proprietary notices affixed to the original Software and Documentation delivered to you to all copies of the Software and Documentation permitted to be made hereunder.

### **4. Installation Services**

If purchased by you and as set forth on an Invoice, Horizon will deliver the Software to you and install such Software at your location(s) ("Installation Services"). If you purchase Hardware from Horizon, Installation Services may include installation of Hardware as well. The date that Horizon completes the foregoing installation is referred to as the "Installation Date." All other quoted installation dates, including dates related to terms such as "installation," "completion of training" and "live," if any, are estimates only.

### **5. Training Services**

If purchased by you and as set forth on an Invoice, Horizon will provide training in the technical skills which will enable attendees to use the Software through in-house training classes which are periodically held at Horizon's facilities or at other locations as Horizon and you may agree ("Training Services"). In consideration of payment of the training fees associated with the Training Services set forth on an Invoice, you are entitled to receive the number of days of Training Services for the number of designated Users as indicated on the Invoice. You shall be solely responsible for all transportation, lodging, meals or any other expenses incurred by your Users attending such Training Services.

### **6. Warranty**

Horizon warrants that for a period of ninety (90) days after the delivery date of the Software to you, the Software shall operate substantially in conformance with its Documentation. During such period, and as the sole and exclusive remedy under the warranty provided in this Section, Horizon will use reasonable commercial efforts to correct any Error in the Software in accordance with its Support Services terms set forth below. Horizon shall not be responsible for correcting errors resulting from causes set forth in Section 7.4 below.

### **7. Support Services**

During the term of the Agreement, and subject to the terms and conditions hereof, Horizon agrees to provide to you the following support services with respect to the Software (collectively, the "Support Services"):

7.1. Horizon shall provide you technical assistance by telephone with the installation and use of the Software, the identification of Software problems, and the reporting of Errors. Horizon will respond to Customer within a reasonable period of time from a request placed by Customer between the hours of 6:00am and 6:00pm, U.S. Eastern Time, Monday through Friday, holidays excepted. You shall designate in writing to Horizon no more than two (2) technical contacts to request and receive telephone support services from Horizon as set forth below ("Support Contacts").

7.2. Horizon will use reasonable commercial efforts to correct all Errors. Upon delivery of an Error Correction, such Error Correction shall be considered to be a part of the Software.

7.3. Horizon shall make available to you from time to time each Minor and Major Release of the Software that Horizon makes generally available without additional charge to its customers who have paid for software

support for such Software and which is intended to replace a prior Release. Prior Releases that are two (2) Releases behind the current generally available Release will be retired six (6) months after the availability of that current Release. In all events, however, telephone support services are provided by Horizon to you with respect to questions regarding the "how-to" use a retired Release of the Software for six (6) months following its retirement.

7.4. Horizon shall not be responsible for (a) correcting Errors resulting from misuse, negligence, revision, modification, or improper use by you or any other person or entity of the Software or any portion thereof; (b) software or hardware other than the Software (or Hardware, to the extent you have purchased maintenance services for the Hardware specified in an Invoice); (c) failure by you to install mandatory Error Corrections or Releases provided to you by Horizon from time to time (d) support services or error correction for retired Releases except to the extent provided above; or (e) Software (i) installed on any equipment other than that possessing the minimum requirements set forth in the Documentation or (ii) used with any software not specified in the applicable end user Documentation. In the event Horizon provides support for support claims by you arising from the foregoing, such services shall be billed to you as Additional Services (defined below).

## **8. Additional Services**

You may request and Horizon may provide, subject to this Agreement and the availability of Horizon personnel, additional services related to the Software and Hardware that are not identified on your Invoice (the "Additional Services"). The Additional Services shall be charged to you at Horizon's then current time and materials charges, together with the cost of any additional or replacement hardware or other components provided in connection with such Additional Services. All on-site support services provided by Horizon are billed as Additional Services. Additional Services for the Initial Term and the next four Renewal Terms will be at the amounts set forth in Exhibit A which is made a part hereof by this reference.

## **9. Fees, Expenses, and Payment**

9.1. You shall pay the fees for the Software ("License Fees") in the amounts and in accordance with the Invoices presented to you. License Fees are billed upon installation or delivery and payment is due within thirty (30) days of the invoice date.

9.2 You shall pay the fees for the Hardware in the amounts and in accordance with the Invoices presented to you. Hardware is billed upon shipment and payment is due within thirty (30) days from the invoice date. If You decide to return the Hardware or any portion thereof, there will be a thirty percent (30%) restocking fee due. Hardware returns will not be accepted after thirty (30) days from the shipping date.

9.3 You shall pay to Horizon the fees for Support Services ("Maintenance Fees") in accordance with the Invoices presented to you. Maintenance Fees are payable annually in advance of July 1 each year ("Maintenance Anniversary Date"). In the event that additional software is added to the definition of Software during the year, then Maintenance Fees for such additional Software shall be prorated on a daily basis for the remainder of the year. Payments for additional Software shall be due and payable upon installation of such Software at your site. Maintenance Fees for the Initial Term and the next four Renewal Terms will be at the amounts set forth in Exhibit A. For the avoidance of doubt, the annual amounts in Exhibit A for the four Renewal Terms are provided for convenience only, and may be subject to change based on the addition or subtraction of the number of school sites licensed to use the Software each year (if applicable), however in such a case the parties agree that the annual escalation for the four Renewal Terms shall be fixed at three percent (3%).

9.4 You shall pay Horizon the fees for Training Services (if you have ordered such) and Installation Services in accordance with the Invoices presented to you ("Training, Installation and Setup Fees"). Training, Installation and Setup Fees are billed upon completion and payment is due within thirty (30) days from the invoice date.

9.5 You shall reimburse Horizon for all costs and expenses, including without limitation, reasonable travel expenses (including transportation, lodging, and per diem) ("Expenses") reasonably incurred in rendering on-site Services to you.

9.6 You agree to pay all fees as set forth in the applicable Invoice presented to you for the Deliverables (the "Fees"). All such Fees and Expenses shall be paid within thirty (30) days after the date of the Invoice for same.

9.7 All Fees and Expenses payable to Horizon under this Agreement are net amounts to be received by Horizon, exclusive of all sales taxes, value added taxes, assessments, and similar taxes and duties (collectively, the "Taxes") and are not subject to offset or reduction because of any Taxes incurred by you or

otherwise due as a result of this Agreement. You shall be responsible for and shall pay directly, any and all Taxes relating to the performance of this Agreement, provided that this paragraph shall not apply to taxes based solely on Horizon's income.

9.8 Interest may be charged by Horizon on overdue amounts not paid to Horizon as provided hereunder at the rate of ONE AND ONE-HALF PERCENT (1-½%) per month or the maximum amount allowed by law, whichever is less, commencing with the date payment was due.

9.9 During the term of this Agreement, you grant Horizon the right to enter your premises during business hours for the sole purpose of examining your records and other information relating to your use of the Software. If this examination reveals that you have improperly used the Software, such conduct shall be considered a material breach of this Agreement and Horizon may choose to either terminate this Agreement or invoice you for such unauthorized use based upon Horizon's standard fees in effect at the time the examination is completed. If the underpaid fees exceed five percent (5%) of the fees actually paid, then you shall also pay Horizon's reasonable costs of conducting the examination.

## 10. Your Obligations

10.1. You shall not load or operate any computer software on the computer that runs the Software if such software would conflict or interfere with the use or performance of the Software.

10.2. You shall be solely responsible for (a) procuring all computer hardware, peripherals, device drivers, third party operating systems, and other third party software which may be required to operate the Software, other than the Hardware; (b) the compatibility of your computer hardware, peripherals, device drivers, third party operating systems, and other third party software with the Software and/or Hardware; (c) providing a safe and suitable location for installation, use, and operation of the Software in accordance with any instructions that may be reasonably specified by Horizon; (d) providing the local area network infrastructure, cabling, and all cabling services in preparation for the installation of the Software and/or Hardware; (e) providing and maintaining the appropriate environment for operating the Software and maintaining back-up and disaster recovery facilities; and (f) except to the extent provided by Horizon as a part of Installation Services, all data entry and loading of your data and maintaining daily back-up or archival copies thereof.

10.3. You shall ensure that all Support Contacts and any of your employees who are responsible for the operating and managing the Software or any other activities related to Software have received Horizon's Training Services. In the event a Support Contact is appointed who is not trained by Horizon Training Services, you agree to notify Horizon in writing promptly thereof and purchase Training Services for such Support Contact.

10.4. You shall provide to Horizon broadband access to the Software. You, at your expense, shall provide the necessary modem or other hardware and shall license and install such remote access software reasonably specified by Horizon for the purposes of providing such broadband access. Upon the reasonable request of Horizon, you shall provide Horizon with access to all locations at which the Software is installed.

10.5. HORIZON STRONGLY ENCOURAGES YOU TO KEEP PROPER BACKUPS OF YOUR DATA AND PROGRAM FILES. In addition to any other liability limitations set forth in this Agreement, Horizon shall not be responsible for any loss of your data, "downtime", loss or corruption of other software program files, whether arising in contract, tort, negligence, strict liability, products liability, or otherwise.

## 11. Indemnification

11.1. Horizon will indemnify, defend and hold harmless you from and against any and all losses, costs, expenses (including attorneys' fees and expenses), claims, liabilities, or damages of any kind incurred or suffered by you arising out of claims that the Software infringes a U.S. copyright or trade secret. The right of indemnification set forth in this Section only applies if the alleged infringement or misappropriation is not caused by or contributed to by (i) modifications to Software made by you or any other third party; (ii) third party software, whether or not provided by Horizon; (iii) the combination, operation or use of the Software with any software, equipment, data or other materials except those provided by Horizon under this Agreement; (iv) use of Software: (A) with equipment other than that possessing the minimum requirements set forth in the Documentation or (B) in any way except in accordance with this Agreement and the Documentation; or (v) your failure to implement Horizon-provided updates, fixes or patches to the Software that would otherwise avoid the applicable infringement or misappropriation. In the event of such a claim, Horizon will have the option, in Horizon's sole discretion, to (i) replace the Software, (ii) modify the Software to make it non-infringing, or (iii) terminate the license to the Software and refund all license fees paid to Horizon by you for same after deduction of an appropriate charge for depreciation based on use by you prior to such removal,

and you shall have no other recourse against Horizon. THIS SECTION 11.1 REPRESENTS HORIZON'S SOLE OBLIGATION AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIM OF INFRINGEMENT.

11.2. You agree to indemnify and hold Horizon harmless from and against any and all losses, costs, expenses (including reasonable attorneys' fees and expenses), claims, liabilities, or damages of any kind incurred or suffered by Horizon which result from or arise out of any claim or liability arising as a result, in whole or in part, from (i) your or User's violation of Section 2 of this Software License and Support Agreement; or (ii) your or User's violation of any rule, regulation, requirement or law of any foreign, federal, state or local governmental authority.

11.3. The rights of a party under this Section 11 to be indemnified shall be subject to all of the following: (a) the indemnified party (the "Indemnitee") must notify the indemnifying party (the "Indemnitor") in writing promptly upon learning that such claim has been or may be asserted, (b) the Indemnitor shall have sole control over the defense of such claim and any negotiations for the settlement or compromise thereof, and (c) the Indemnitee shall provide reasonable assistance and cooperation to the Indemnitor to facilitate the settlement or defense of any such claim.

## 12. Term and Termination

12.1 Unless sooner terminated as provided herein, (a) the term of this Agreement will commence on the Effective Date and continue in effect for an initial period which ends on the following Maintenance Anniversary Date ("Initial Term"), and (b) the term of this Agreement will automatically renew for four additional terms of twelve (12) months (each a "Renewal Term"). Unless otherwise terminated earlier as set forth in Section 12.2 below, this Agreement shall terminate at the end of the fourth Renewal Term which would be June 30, 2027. The Initial Term and the four Renewal Terms shall begin on 7/1/22 and end on 6/30/27 and shall collectively be defined as the "Minimum Term".

12.2 This Agreement may be terminated at any time upon the giving of written notice:

(i) By either party in the event that the other party (a) with respect to default of any payment obligations or obligations under Section 13 hereof, fails to remedy, or (b) with respect to all other obligations, fails to commence remedying any default under this Agreement for a period continuing more than thirty (30) days after the aggrieved party shall have given the other party written notice specifying such default; or

(ii) By Horizon if you make an assignment for the benefit of creditors, or commence or have commenced against you any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium.

(iii) By either party for convenience by providing written notice to the other party at least sixty (60) days prior to the end of the then-current term of its intent not to renew the term of this Agreement. If Customer terminates for convenience during the Minimum Term, early termination fees may be charged and one of the following shall apply:

### **Termination occurs during the Initial Term (between the Effective Date and 6/30/23):**

50% payment of the Maintenance Fees for the unused second annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused third annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused fourth annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused fifth annual term to be made thirty (30) days from date of invoice.

### **Termination occurs during the first Renewal Term (between 7/1/23 – 6/30/24):**

If not paid, full payment of the Maintenance Fees for the second annual term to be made within five (5) business days.

50% payment of the Maintenance Fees for the unused third annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused fourth annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused fifth annual term to be made thirty (30) days from date of invoice.

**Termination occurs during the second Renewal Term (between 7/1/24 – 6/30/25):**

If not paid, full payment of the Maintenance Fees for the third annual term to be made within five (5) business days.

50% payment of the Maintenance Fees for the unused fourth annual term to be made thirty (30) days from date of invoice.

50% payment of the Maintenance Fees for the unused fifth annual term to be made thirty (30) days from date of invoice.

**Termination occurs during the third Renewal Term (between 7/1/25 – 6/30/26):**

If not paid, full payment of the Maintenance Fees for the fourth annual term to be made within five (5) business days.

50% payment of the Maintenance Fees for the unused fifth annual term to be made thirty (30) days from date of invoice.

**Termination occurs during the fourth Renewal Term (between 7/1/26 – 6/30/27):**

If not paid, full payment of the Maintenance Fees for the fifth annual term to be made within five (5) business days.

12.3 Upon termination of this Agreement for any reason, (a) you shall immediately return to Horizon all property of Horizon or its suppliers, including, but not limited to, the Software, and all copies thereof, and the "Proprietary Information" (as defined in Section 13) of Horizon and (b) all rights and licenses granted by Horizon hereunder to you shall immediately cease.

12.4 Upon termination of this Agreement, Sections 3, 9, 11, 12, 13-19, and 22 of this Agreement shall survive termination of this Agreement.

**13. Confidentiality**

13.1 In the performance of this Agreement, either party may disclose to the other certain Proprietary Information. For the purposes of this Agreement, "Proprietary Information" means information that is of value to its owner and is treated as confidential. Proprietary Information includes, without limitation, all non-public information pertaining to the Deliverables.

13.2 Both parties acknowledge and agree that the Proprietary Information shall remain the sole and exclusive property of the disclosing party or a third party providing such information to the disclosing party. The receiving party agrees to hold the Proprietary Information disclosed by the other party in strictest confidence and not to, directly or indirectly, copy, use, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, or otherwise transfer the Proprietary Information for any purpose whatsoever other than as expressly provided by this Agreement. The disclosure of the Proprietary Information does not confer upon the receiving party any license, interest, or rights of any kind in or to the Proprietary Information, except as expressly provided under this Agreement. Subject to the terms set forth herein, the receiving party shall not disclose the Proprietary Information to a third party without the written consent of the disclosing party and shall protect the Proprietary Information of the disclosing party with the same degree of protection and care

the receiving party uses to protect its own Proprietary Information, but in no event less than reasonable care. Notwithstanding the foregoing, Horizon may disclose this Agreement to its investors, proposed investors, and assignees or proposed assignees that are subject to confidentiality restrictions similar to the provisions set forth in this Section.

13.3 Nothing in this Section shall prohibit or limit the receiving party's use of information if (i) at the time of disclosure hereunder, such information is generally available to the public; (ii) after disclosure hereunder such information becomes generally available to the public, except through breach of this Agreement by the receiving party; (iii) the receiving party can demonstrate such information was in its possession prior to the time of disclosure by the disclosing party; (iv) the information becomes available to the receiving party from a third party which is not legally prohibited from disclosing such information; (v) the receiving party can demonstrate the information was developed by or for it independently without the use of such information; or (vi) it is Proprietary Information which, five (5) years after the term of this Agreement is not considered a "trade secret" under applicable law. If disclosure is required under applicable law or regulation, the receiving party shall notify the disclosing party and provide assistance in obtaining an appropriate protective order.

#### **14. WARRANTY DISCLAIMER**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER HORIZON NOR ANY THIRD PARTY SUPPLIERS MAKE ANY WARRANTIES, REPRESENTATIONS, CONDITIONS, OR GUARANTIES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR OF ERROR FREE AND UNINTERRUPTED USE, ALL OF WHICH ARE HEREBY EXCLUDED AND DISCLAIMED IN ALL RESPECTS.

#### **15. LIMITATION OF LIABILITY**

15.1 IN NO EVENT WILL HORIZON, ITS SUBSIDIARIES, ASSOCIATED COMPANIES, OR SUPPLIERS, BE LIABLE TO YOU OR ANY USERS UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE TOTAL FEES RECEIVED BY HORIZON UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH CLAIM.

15.2 IN NO EVENT WILL HORIZON, ITS SUBSIDIARIES, ASSOCIATED COMPANIES, OR SUPPLIERS, BE LIABLE TO YOU OR ANY USERS FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES) OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF OR INABILITY TO USE THE DELIVERABLES OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT OR THE USE OF THE DELIVERABLES, REGARDLESS OF THE FORM OF CLAIM OR ACTION, EVEN IF HORIZON, ITS SUBSIDIARIES, ASSOCIATED COMPANIES, OR SUPPLIERS, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

15.3 Without limiting the foregoing, you agree that neither Horizon nor any of its officers, directors, agents, or employees shall have any liability for errors or omissions in the output of the Software whether such errors or omissions are caused by errors or inaccuracies in the conversion of data as inputs to the Software, in the transmission of such data, or in the display of such data, or otherwise.

15.4 You acknowledge and agree that the allocation of risks provided in this Agreement are reflected in the Fees and other charges provided hereunder and are reasonable and appropriate under the circumstances and that Horizon cannot control the manner in which and the purpose for which you shall use the Software.

#### **16. Ownership**

Horizon and its suppliers expressly retain title and ownership to all worldwide intellectual property rights, including without limitation, design, trade secrets, know-how, patent rights, trademarks, service marks and copyrights in and to the Deliverables (other than purchased Hardware), source code of the Software, Documentation and any modifications, adaptations, derivative works, and enhancements made thereto. Customer hereby waives any claim that it may have had or has to title and ownership of intellectual property rights in and to the Deliverables (other than purchased Hardware), source code of the Software, Documentation and Proprietary Information, and any modifications, adaptations, enhancements, or derivative works made by or under the direction of Horizon or Customer.



## **17. Remedies**

Without limiting the materiality of any other term, you acknowledge that each provision in this Agreement providing for the protection of Horizon's copyrights, Proprietary Information and other proprietary rights is material to this Agreement. You agree that any threatened or actual breach of Horizon's copyrights, Proprietary Information or other proprietary rights by you shall constitute immediate, irreparable harm to Horizon for which monetary damages is an inadequate remedy and for which equitable remedies may be awarded by a court of competent jurisdiction without requiring Horizon to post any bond or any other security. Nothing contained herein shall limit either party's right to any remedies at law, including the recovery of damages for breach of this Agreement.

## **18. Compliance**

You will strictly comply with all applicable laws and regulations relating in any way to the use of the Deliverables, including, but not limited to, obtaining licenses or permits and any other government approval.

## **19. Governing Law**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT REGARD TO ITS RULES GOVERNING CONFLICTS OF LAW.

## **20. Relationship of the Parties**

Nothing in this Agreement shall be deemed to constitute a partnership between the parties or be deemed to constitute one party as agent of the other.

## **21. Severability**

If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that this Agreement shall be more strictly construed against one party than the other.

## **22. Non-Solicitation**

During the term of this Agreement and for a period of one (1) year after the expiration or termination of this Agreement, you agree not to: (a) knowingly solicit or otherwise induce or encourage any employee of Horizon to terminate his/her employment with Horizon or (b) hire, employ or otherwise engage any person known by you to be an employee or former employee of Horizon.

## **23. Government Contracts**

The following applies to all acquisitions of the Deliverables by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant or other activity with the U.S. government. The Deliverables provided to you hereunder are "commercial items" as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided to you only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government End Users, if any, acquire the Software and its associated Documentation with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the Deliverables may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or 48 CFR 227.72. Contractor/manufacturer is Horizon Software International, LLC, 2850 Premiere Parkway, Suite #100, Duluth, GA 30097.

## **24. Waiver**

A waiver by either party of any breach shall not be construed to be a waiver of any other breach.

## **25. Force Majeure**

Neither party shall be liable to the other party for any failure to perform any of its obligations (except for your payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control.

**26. Notices**

All communications between the parties which are required or permitted to be in writing shall be sent by hand delivery with receipt obtained, or by recognized courier, properly prepaid and sent to the Horizon at 2850 Premiere Parkway, Suite #100, Duluth, GA 30097 and to you at the address at which you are invoiced. All such communications shall be deemed received by the other party upon actual delivery or refusal. By written communication, either party may designate a different address for purposes hereof.

**27. Export Compliance**

You agree not to export, re-export, or otherwise transmit, directly or indirectly, any product, service, sample, information, technical data, or other materials received from Horizon hereunder, unless in full compliance with all applicable laws and regulations, including obtaining any required approvals or export licenses.

**28. E-Verify**

Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Horizon shall use the U.S. Agency of Homeland Security’s E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Horizon shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Upon request, Horizon must provide evidence of compliance with 448.095, Fla. Stat. Evidence may consist of, but is not limited to, providing notice of Horizon’s E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and Customer may choose to terminate the Agreement at its sole discretion.

**29. Entire Agreement**

This Agreement shall constitute the entire Agreement between the parties hereto and supersedes and replaces any and all prior written and oral agreements and/or understandings between the parties. If You issue a purchase order or other instrument covering the Deliverables provided under this Agreement, it is expressly agreed that the terms of this Agreement supersede any different, conflicting or additional terms in a purchase order or other instrument. This Agreement may not be amended, modified, supplemented, or deviated from except by a writing executed by an authorized employee of you and Horizon. In the event of a conflict between the terms of this Agreement and an Invoice, the terms of this Agreement shall control. This Agreement shall inure to the benefit of and be binding upon the permitted successors, legal representatives and assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective representatives as of the dates set forth below:

*By signing, I certify that I have read and agree with the terms of this Agreement and I am authorized to sign and execute on behalf of my institution.*

**The School Board of Brevard County, FL**

**Horizon Software International, LLC**

By: \_\_\_\_\_  
Authorized Signature

By:  \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Name: Robert DeCarlo

Title: \_\_\_\_\_

Title: Senior VP, Chief Financial Officer

Date: \_\_\_\_\_

Date: 05/12/2022

**EXHIBIT A: MAINTENANCE FEE AND ADDITIONAL SERVICES PRICING**

Maint / Subscription Term	7/1/22 - 6/30/23	7/1/23 - 6/30/24	7/1/24 - 6/30/25
% Increase		3.0%	3.0%
OneSource FOH	\$ 46,672.34	\$ 48,072.51	\$ 49,514.69
OneSource BOH	\$ 35,198.04	\$ 36,253.98	\$ 37,341.60
<b>Total (Annual)</b>	<b>\$ 81,870.38</b>	<b>\$ 84,326.49</b>	<b>\$ 86,856.29</b>
Onsite (Daily Rates)	\$ 727.00	\$ 748.81	\$ 771.27

Maint / Subscription Term	7/1/25 - 6/30/26	7/1/26 - 6/30/27
% Increase	3.0%	3.0%
OneSource FOH	\$ 51,000.13	\$ 52,530.13
OneSource BOH	\$ 38,461.85	\$ 39,615.71
<b>Total (Annual)</b>	<b>\$ 89,461.98</b>	<b>\$ 92,145.84</b>
Onsite (Daily Rates)	\$ 794.41	\$ 818.24


**The School Board of Brevard County, FL  
Additional Terms and Conditions**

**PUBLIC RECORDS - IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BPS CUSTODIAN OF PUBLIC RECORDS AT (321) 633-1000 ext. 11453, [recordsrequest@brevardschools.org](mailto:recordsrequest@brevardschools.org), BREVARD COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, 2700 Judge Fran Jamieson Way, Viera, Florida 32940.**

**Horizon Software International, LLC**

Name : Robert DeCarlo

Title : Senior VP, Chief Financial Officer

Signature :   
signature35e39991-0fd8-43ce-ad1f-e39a2b20e4df

Date: 05/25/2022