

**EasyHRweb, LLC**  
**System Access Agreement**

This System Access Agreement (“Agreement”) is entered into this 1<sup>st</sup> day of January, 2008 (the “Effective Date”), between EasyHRweb, LLC, a South Carolina limited liability company having its principal place of business at, 1225 Laurel St, Suite 404, Columbia, SC 29201 Telephone No. 803-354-3545 (“EasyHRweb”), and the School Board of Brevard County, a Florida school district, having its principal place of business at 2700 Judge Fran Jamieson Way Viera, FL 32940-6699, Telephone No. 321-631-1911 (“Customer”).

This Agreement consists of this page (“Signature Page”), the attached terms and conditions (“Terms and Conditions”), the schedules (“Schedules”), the Attachment A (“Attachment A”) and the Attachment A 1.1. (“Attachment A 1.1”).

Agreed To:

EasyHRweb, LLC

Customer Name: School Board of Brevard County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Joseph G. Stone

Name: Dr. Richard A. DiPatri

Title: President & CEO

Title: Superintendent

**EasyHRweb, LLC**  
**System Access Agreement**  
**Terms and Conditions**

**1. Definitions.**

**1.1 Defined Terms.** Definitions for certain capitalized terms used in this Agreement are set out in Schedule 1.1. Unless defined elsewhere in the body of the Agreement, or the context otherwise requires, capitalized terms used in this Agreement will be interpreted in accordance with the definitions provided in Schedule 1.1.

**2. Term.**

**2.1 Term.** The term of this Agreement (the “*Term*”) shall commence on the Effective Date stated above (January 1, 2008) and, subject to the rights of each Party to terminate provided in Article 8, shall continue in force for a period of twelve (12) months, through December 31, 2008. Thereafter, the Term may be extended for additional twelve month period upon mutual agreement between both parties.

**3. System Access and Services.**

**3.1 System Access.** Subject to payment of the Charges and compliance with the other terms and conditions of this Agreement, Customer shall have the right to access the System and to use the Software in accordance with the limited license set forth in Section 4.1.1. The System shall be available 24 hours per day, 7 days per week, but excluding periods of Maintenance Downtime and periods of Unscheduled Outages outside the control of EasyHRweb. EasyHRweb may enhance and modify the Software at its discretion during the Term of this Agreement. EasyHRweb will conduct modifications, enhancements, changes or other maintenance necessary to correct suspected and documented errors such that each item of licensed system software for which EasyHRweb has operational responsibility operates in material compliance in accordance with its documentation and specifications (the “System Maintenance”). Customer shall receive the benefit of all such enhancements and modifications which EasyHRweb provides generally and without separate charge to its customers using the System. No express or implied warranty is made by EasyHRweb regarding the frequency or the extent of any such new releases, enhancements or modifications.

**3.2 Required Equipment.** EasyHRweb shall advise Customer from time to time as to the Required Equipment and the configuration necessary to utilize the System. The list of Required Equipment as of the date of this Agreement is shown on Schedule 1.2. Unless expressly provided otherwise in this Agreement, Customer shall be solely responsible for obtaining, operating and maintaining the Required Equipment and all Customer communication lines and capabilities as may be necessary for Customer to access and use the System.

**3.3 Support Services.** EasyHRweb will provide telephone support services including system maintenance concerning use of the Software and the System between the hours of 8:30 a.m. and 5:00 p.m., E.S.T., Monday through Friday, excluding customary holidays recognized by EasyHRweb. Outside those hours, EasyHRweb will maintain an automated system which will

allow Customer to leave messages concerning requests for support which EasyHRweb shall respond to during its normal support service operating hours.

**3.4 Additional Services.** During the Term, EasyHRweb shall perform such other services, functions and procedures as the Parties may mutually agree (the “*Additional Services*”). Unless otherwise agreed by EasyHRweb, any Additional Services which it provides shall be performed on a time and material basis in accordance with its then current schedule of fees for such services. Customer acknowledges that the provision of Additional Services will be subject to EasyHRweb’s then available resources and existing commitments and that there is no implied obligation to provide Additional Services. In addition to any other fees or charges payable to EasyHRweb, Customer will pay or reimburse EasyHRweb for all scoping of Additional Services that require more than (1) hour and all reasonable out-of-pocket costs and expenses (including, without limitation, travel and travel-related expenses) incurred by EasyHRweb in connection with the performance of any Additional Services.

**3.5 Changes.** Any changes in the permitted use of the Software and the System by Customer or the services provided by EasyHRweb under this Agreement shall be made only by a written change order approved by EasyHRweb.

#### **4. EasyHRweb Software License; Intellectual Property Rights.**

##### **4.1 EasyHRweb Software.**

4.1.1 EasyHRweb hereby grants to Customer during the Term a limited, non-exclusive, non-transferable right and license to access and use the Software solely through the System. Prior to accessing the System, Customer shall provide EasyHRweb with Customer’s primary IP address. If Customer’s IP address subsequently changes, Customer shall notify EasyHRweb in advance of the change and provide EasyHRweb with Customer’s new IP address. Customer’s use of the Software shall be limited solely to its own internal data processing and computer needs. The license granted to Customer shall not include any right to sublicense or relicense to any Third Party any of the rights to access and use the Software or the System granted to Customer under this Agreement. Customer shall not enable or permit any Third Party to access or use the Software or the System pursuant to this Agreement.

4.1.2 EasyHRweb shall retain all of its right, title and interest in and to the Software and Customer shall have no ownership interests or other rights in the Software except the right and license to use the Software referred to in Section 4.1.1. All rights of Customer under this license to utilize the Software and the System shall terminate upon any termination of this Agreement.

**4.2 Proprietary Names and Markings.** Customer agrees that it shall not, without EasyHRweb’s prior written consent, use any name(s), trade name(s) or trademark(s) of EasyHRweb. Customer shall not attempt to copy or remove any proprietary marks, markings, logos, copyrights or other indications of industrial or intellectual property or other rights on, in or related to the Software.

## **5. Charges; Payments.**

5.1 **Charges for Services.** Customer agrees to pay to EasyHRweb all fees and other amounts payable under this Agreement (the “*Charges*”) in the manner set forth in this Article 5. All Charges payable to EasyHRweb and any other amounts referred to in this Agreement shall be in United States dollars.

5.2 **System Access Fees.** The System Access Fees payable by Customer as of the Effective Date are set forth in Schedule 1.3. The amount of the System Access Fees shall be subject to adjustment during the Term as provided in Schedule 1.3. The System Access Fees shall be invoiced to Customer on a monthly basis during the Term beginning on the first day of the calendar month following the Commencement Date. Monthly invoices shall be payable upon receipt and shall be delinquent if not paid within forty-five (45) days of the invoice date as specified by Florida Statute 218.74. If the initial month following the Commencement Date or the last month prior to the Termination Date is less than a full calendar month, the amount of the System Access Fees invoiced and payable in respect of such partial months shall be prorated accordingly.

5.3 **Other Services and Payments.** Any other amounts that Customer becomes obligated to pay to EasyHRweb under this Agreement for services such as conversion, training, support or any Additional Services, or as reimbursement for expenses incurred by EasyHRweb, shall be paid within forty-five (45) days of receipt of an invoice for such amount.

5.4 **Taxes.** In addition to all other amounts due to EasyHRweb under this Agreement, Customer shall pay to or reimburse EasyHRweb for all federal, state, local or other sales or services taxes or assessments (exclusive of any based on the net income of EasyHRweb) levied or assessed upon the Charges paid under this Agreement.

5.5 **Interest on Overdue Payments.** Customer shall pay to EasyHRweb interest on any amounts in respect of this Agreement which are not paid or credited when due. Such interest shall be calculated daily from the date due to the date paid at a rate equal to one percent (1.0%) per month or the maximum rate permitted by applicable law, as specified in Florida Statute 218.74 whichever is less.

5.6 **Dispute of Invoices.** If Customer in good faith disputes an invoice, it must notify EasyHRweb in writing of the dispute within ten (10) days after receipt of the relevant invoice specifying in detail the reason why Customer disputes the invoice and all disputes to EasyHRweb must be addressed to its President to be effective. If only part of the invoice is disputed, Customer shall pay the undisputed portion in accordance with the applicable provisions of Section 5.2 and Section 5.3. If Customer provides the required notice and withholds payment in accordance with this Section 5.6, EasyHRweb shall be obliged to continue to allow Customer to use the Software and the System in accordance with this Agreement until the payment dispute is resolved; provided however that EasyHRweb shall not be obligated to continue to allow Customer to use the Software and the System if EasyHRweb reasonably determines Customer’s dispute is not in good faith. Following the resolution of such dispute, Customer shall reimburse EasyHRweb for any underpayment plus interest on such amount from the original due date until paid at the rate set forth in Section 5.5.

**5.7 Suspension of Access and Services.** If Customer fails to pay to EasyHRweb the amounts required under this Article 5 as and when such sums are due, subject to the provisions of Section 5.6, EasyHRweb shall have the right to suspend Customer's access to the Software and the System as well as any other services which EasyHRweb is then performing for Customer. In addition, EasyHRweb may in such event terminate this Agreement by written notice to Customer, unless Customer pays all amounts due, including all accrued interest, within ten (10) days of such notice.

## **6. Customer Responsibilities.**

**6.1 Operational Responsibilities.** Customer shall be responsible for:

6.1.1 acquiring and maintaining the Required Equipment utilized in connection with this Agreement;

6.1.2 complying with mutually agreed security measures in accordance with the provisions of this Agreement;

6.1.3 fulfilling such other Customer obligations as are expressly undertaken in this Agreement;

6.1.4 providing competent and skilled personnel for the tasks to which they are assigned to the extent that such tasks are reasonably related to the performance of any services by EasyHRweb under this Agreement;

6.1.5 appointing one of its employees as Project Manager (the "Project Manager"), who shall work with the representatives of EasyHRweb regarding implementation of the Software and who shall furnish EasyHRweb in a timely manner with all of the information reasonably deemed necessary by EasyHRweb to complete the implementation and modifications;

6.1.6 ensuring that all of its users utilizing or otherwise receiving benefits for the use of the System have consented to providing their data to the System and EasyHRweb and to third parties to whom EasyHRweb shall provide such data under this Agreement and complying with all laws in the provision of Customer Data to EasyHRweb.

**6.2 Inaccurate Data.** EasyHRweb shall not be responsible for the accuracy of any Customer Data that is input into the System by Customer nor shall EasyHRweb be responsible for any output or data resulting from inaccurate Customer Data which has been input into the System.

## **7. Data Security, Confidentiality and Access.**

**7.1 Ownership and Use of Customer Data.**

7.1.1 All Customer Data is and shall remain the property of Customer. The Customer Data shall not be used or disclosed by EasyHRweb other than in connection with the performance of its obligations under this Agreement, or otherwise commercially exploited by or on behalf of EasyHRweb.

7.1.2 As a part of the functionality of the System, Customer is enabled to request EasyHRweb to provide Customer Data directly to its authorized vendors (such as insurance companies, TPA's i.e.). Upon written request of Customer and the designation of authorized vendors by Customer, EasyHRweb agrees to provide relevant Customer Data as designated by Customer to Customer's authorized vendors. Customer shall at all time ensure that such authorized vendors are entitled to receive such Customer Data in compliance with all applicable statutes, laws, regulations and requirements of governmental authorities having jurisdiction over the Parties or the subject matter of this Agreement. Customer further agrees to provide to EasyHRweb any information it may reasonably request to confirm Customer's compliance with this Section.

7.1.3 Notwithstanding the foregoing, EasyHRweb shall not be precluded from utilizing in its business generalized statistics or similar data about its operations provided that such information is not identified with, or would not reasonably lead to identification with, Customer unless Customer consents to such identification.

**7.2 Customer Access to Data.** Customer shall be permitted electronic access to Customer Data residing in the System at all times, except where limitations on access are required by security requirements, during a period of repair or maintenance of the Software or the Equipment, or at any time EasyHRweb has suspended or terminated Customer's access to the System as permitted under this Agreement. Upon written request by Customer at any time and from time to time, or upon the termination or expiration of the Term, EasyHRweb shall return to Customer, at Customer's expense, a copy of all electronic Customer Data in EasyHRweb's then existing machine-readable formats and media types for the period of this contract. EasyHRweb shall also delete any Customer Data from the Equipment upon termination of this Agreement, except as necessary for EasyHRweb to perform any of its obligations under this Agreement.

**7.3 Safeguarding Customer Data in the System.** During the Term, EasyHRweb shall maintain commercially reasonable safeguards against the destruction, loss, disclosure or alteration of Customer Data residing in the System and as necessary to guard against unauthorized access to the Customer Data. Such measures shall include the use of software or devices which (A) require all authorized Customer users to enter separate user identification codes and passwords prior to gaining access to any Customer Data residing in the System, (B) control and track the addition and deletion of authorized Customer users, and (C) control access by authorized Customer users to areas and features of the System.

**7.4 Recovery of Customer Data.** If any Customer Data is lost or damaged while resident in the System, EasyHRweb shall use commercially reasonable efforts to assist Customer in replacing or regenerating such lost or damaged data without additional charge or expense to Customer unless such loss or damage is due to a Force Majeure Event or the actions of Customer, in which event Customer shall bear such charges or expenses.

**7.5 Confidential Information Obligations.**

**7.5.1 Confidential Information.** EasyHRweb and Customer each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its business and is not in the public domain. For purposes of this Agreement, "Confidential Information" shall mean (a) all information of a Party marked

“confidential,” “restricted,” “proprietary” or with a similar designation; (b) all Customer Confidential Information (as defined below); and (c) all EasyHRweb Confidential Information (as defined below). “Customer Confidential Information” shall mean all data, customer lists, financial information and sales and marketing plans of Customer. “EasyHRweb Confidential Information” shall mean (i) technical information, data or other proprietary information relating to the Software and the System (including all source codes, object codes, software programs, computer processing systems and techniques employed or used by EasyHRweb, and any related items such as specifications, layouts, flow charts, manuals, instruction books and training materials, programmer, technical and user documentation, and any and all upgrades, enhancements, improvements or modifications to the foregoing), and (ii) all EasyHRweb financial information.

**7.5.2 Obligations.** Each Party shall use at least reasonable care to prevent disclosing to other persons the Confidential Information of the other Party; provided, however, that each Party may disclose such information to its employees and authorized agents who have a need to know such information and who have agreed in writing to preserve such information’s confidentiality. The disclosing party shall be responsible for any breach by any such employee or agent of any such confidentiality obligations; provided that, if a party discloses Confidential Information of the other party at the direction of the other party, the other party shall be deemed to be the disclosing party. Following the Termination Date, upon written request by a Party, the other Party shall return promptly to the requesting Party the requested Confidential Information to the extent it is then in such other Party’s possession or control (provided that the other Party may retain a copy of such information to the extent necessary to exercise its rights or perform any continuing obligations under this Agreement) and certify in writing its compliance with this sentence.

**7.5.3 Exclusions.** Notwithstanding the foregoing, Section 7.5.3 will not apply to any particular information which would otherwise be considered Confidential Information that the Party to whom such information is disclosed (the “Receiving Party”) can demonstrate (a) was in the public domain at the time of disclosure to the Receiving Party; (b) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the Receiving Party; (c) was in the possession of the Receiving Party at the time of disclosure to it without being subject to another confidentiality agreement; (d) was received after disclosure to it from a Third Party who had a lawful right to disclose such information to it; or (e) was independently developed by the Receiving Party without reference to Confidential Information of the disclosing party. In addition, a Party shall not be considered to have breached its obligations under Section 7.5.3 for disclosing Confidential Information of the other Party (i) as required to exercise its rights or perform any continuing obligations under this Agreement, or (ii) if in the opinion of such Party’s legal counsel, such disclosure is required by legal process or pursuant to any applicable statute, rule or regulation, including regulation of a stock exchange. Except with respect to securities laws, disclosure obligations or other applicable laws which require immediate disclosure, the Party which desires to make the disclosure shall advise the other Party of its intentions sufficiently in advance of the disclosure to allow the other Party a reasonable period of time in which to object to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other appropriate action to protect the Confidential Information.

## **8. Termination.**

**8.1 Termination for Cause by EasyHRweb.** EasyHRweb shall have the right to terminate this Agreement upon giving Customer written notice:

8.1.1 If Customer fails to pay any sums due to EasyHRweb under this Agreement (unless subject to a bona fide dispute as defined in Section 5.6) on their respective due dates and fails to pay such sums within forty-five (45) days after written notice of the nonpayment is given by EasyHRweb; or

8.1.2 Following a material default by Customer in the due performance or satisfaction by it of any material covenant of Customer under this Agreement and the failure of Customer to remedy such default within thirty (30) days of receipt by Customer of such written notice. Any such notice must be given by EasyHRweb within sixty (60) days of the event constituting the default.

**8.2 Termination for Cause by Customer.** Customer shall have the right to terminate this Agreement upon giving EasyHRweb written notice following a material default by EasyHRweb in the due performance or satisfaction by it of any material covenant of EasyHRweb under this Agreement and the failure of EasyHRweb to remedy such default within thirty (30) days of receipt by EasyHRweb of such written notice. Any such notice must be given by Customer within sixty (60) days of the event constituting the default.

**8.3 Termination for Bankruptcy.** If either Party commits an Act of Bankruptcy, the other Party may terminate this Agreement in its entirety by promptly delivering written notice of termination to the bankrupt Party. If a Party entitled to terminate this Agreement pursuant to this Section 8.3 elects to do so, such termination will be deemed to be a termination for cause by such Party under Section 8.1 or Section 8.2, as applicable.

**8.4 Termination for a Force Majeure Event.** If a Force Majeure Event has occurred and within thirty (30) days after the first occurrence of the Force Majeure Event, EasyHRweb has been unable to reestablish Customer's access to the System, then Customer may, as its sole and complete remedy against EasyHRweb, terminate this Agreement by delivering a written notice of termination to EasyHRweb on not less than 24 hours notice. Following a termination under this Section 8.4, the Charges will be equitably adjusted to take into account the early termination of this Agreement. Upon early termination of this Agreement due to the occurrence of a Force Majeure Event, Customer will be relieved of all liability including payment for services that EasyHRweb is no longer capable of providing.

**8.5 Payments upon Early Termination.** The prices for Services under this Agreement were determined by mutual agreement based upon certain assumed volumes of processing activity and the length of the Term of this Agreement. Customer acknowledges that without the certainty of such revenue during the remainder of the Term, EasyHRweb would have been unwilling to provide Services at the prices set forth in this Agreement. The parties agree that it would be difficult or impossible to ascertain EasyHRweb's actual damages for a breach of this Agreement by Customer resulting in a termination of this Agreement before the end of the Term. Accordingly, in the event of a termination of this Agreement by EasyHRweb under the



provisions of Section 8.1. Customer agrees to pay EasyHRweb as liquidated damages an amount equal to 60% of the greater of:

- (i) the monthly Minimum System Access Fees (as set forth in Schedule 1.3), or
- (ii) the monthly average of the System Access Fees invoiced to Customer by EasyHRweb during the twelve (12) monthly billing periods preceding the date of termination,

multiplied by the number of months remaining in the Term of this Agreement. The parties acknowledge and agree that, after taking into account the terms of this Agreement and all relevant circumstances at the date hereof, the amount of liquidated damages payable by Customer is a reasonable and genuine estimate of the actual non-out-of-pocket damages which EasyHRweb would suffer if EasyHRweb were to fail to receive Customer's business for the remainder of the Term, and, in any event, does not constitute a penalty. Despite the foregoing, nothing in this Agreement shall limit EasyHRweb's right to recover from Customer: (a) any amounts for which Customer is liable at the time of termination; (b) any payment under any indemnification provision of this Agreement; or (c) any incremental out-of-pocket costs incurred by EasyHRweb from the termination, such as severance costs.

**8.6 Effect of Termination.** Upon expiration or termination of this Agreement for any reason, Customer will pay EasyHRweb for all access and services provided and pay, or reimburse EasyHRweb for, all reimbursable expenses incurred through the effective date of such expiration or termination. Upon termination of this Agreement, EasyHRweb shall have no further obligation to provide Customer access to the Software or the System or perform any additional services for Customer except as expressly provided otherwise in this Agreement.

## **9. Limitation of Liability.**

**9.1 Liability Limits.** EASYHRWEB'S LIABILITY FOR DAMAGES TO CUSTOMER FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT (INCLUDING INDEMNITY), TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT OF THE SYSTEM ACCESS FEES PAID BY CUSTOMER FOR THE CONTRACT PERIOD PRECEDING THE DATE OF THE DAMAGE CLAIM AND SHALL NOT EXCEED THE TOTAL AMOUNT OF THE CONTRACT.

**9.2 Excluded Liability.** EASYHRWEB SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, LAW, EQUITY OR OTHERWISE, EVEN IF EASYHRWEB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.3 Acknowledgment.** Customer and EasyHRweb expressly acknowledge that the limitations contained in this Article 9 represent their express Agreement with respect to the allocation of risks between them as related to the amount of the consideration each is to receive

under this Agreement, and each of Customer and EasyHRweb fully understands and irrevocably accepts such limitations. Customer and EasyHRweb agree that the limitations in this Article 9 should specifically apply to any alternative remedy ordered by an arbitrator or court in the event such arbitrator or court determines that a sole and exclusive remedy provided for in this Agreement fails of its essential purpose.

**9.4 Force Majeure.** EasyHRweb shall not be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by (a) fire, flood, earthquake, elements of nature or acts of God, (b) acts of vandalism or terrorism (electronic or otherwise), (c) riots, civil disorders or revolutions, (d) strike or other significant labor disruption, or (e) nonperformance by a Third Party or any other cause beyond the reasonable control of EasyHRweb, including without limitation failures or fluctuations in telecommunications systems, lines, or other equipment (each of such events being referred to herein as a “Force Majeure Event”). If a Force Majeure Event occurs, EasyHRweb shall be excused from further performance or observance of the obligations so affected for as long as the Force Majeure Event prevails. EasyHRweb shall notify Customer by telephone as soon as practicable regarding the occurrence and, if known, anticipated duration of any Force Majeure Event. If, within thirty (30) days after the first occurrence of a Force Majeure Event, EasyHRweb has been unable to reestablish access to the System, then Customer may terminate this Agreement pursuant to Section 8.4. Subject to Section 8.4, Customer shall continue to pay amounts due and payable by Customer to EasyHRweb for only the services that EasyHRweb is capable of and continues to provide under this Agreement upon the occurrence of any Force Majeure Event.

## **10. Indemnification.**

**10.1 Intellectual Property Indemnity.** EasyHRweb agrees, up to the limits of liability set forth in Section 9.1, to indemnify, defend and hold harmless Customer from any costs, damages, and reasonable attorneys’ fees resulting from any claims by any Third Party that the Software made available for use by Customer directly infringes any United States patent, copyright or trademark, or misappropriates any trade secret arising under the laws of the states of the United States. If EasyHRweb receives notice of an alleged infringement, or if EasyHRweb’s use of the Software shall be prevented by permanent injunction, EasyHRweb may, at its sole option and expense: a) procure for Customer the right to continue using the Software as provided hereunder; b) modify the Software so that it is no longer infringing; or c) replace the Software with computer software of equal or superior functional capability. If none of the foregoing is commercially reasonable, EasyHRweb shall have the right to terminate this Agreement.

**10.2 Intellectual Property Indemnity Limitations.** THE RIGHTS GRANTED TO CUSTOMER UNDER SECTION 10.1 (“INTELLECTUAL PROPERTY INDEMNITY”) SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND EASYHRWEB’ SOLE OBLIGATION FOR ANY ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT. EASYHRWEB SHALL HAVE NO LIABILITY TO CUSTOMER IF ANY ALLEGED INFRINGEMENT OR CLAIM OF INFRINGEMENT IS BASED UPON: (A) ANY MODIFIED SOFTWARE; (B) ANY CUSTOMER OR THIRD PARTY APPLICATION; (C) ANY THIRD PARTY SOFTWARE INCLUDED WITH EASYHRWEB’ SOFTWARE; (D) PROFESSIONAL SERVICES

PROVIDED PURSUANT TO ANY AGREEMENT WITH CUSTOMER IN COMPLIANCE WITH CUSTOMER'S DESIGN REQUIREMENTS OR SPECIFICATIONS; OR (E) THE USE OF SOFTWARE OTHER THAN AS PERMITTED UNDER THIS AGREEMENT OR IN A MANNER FOR WHICH IT WAS NOT INTENDED.

**10.3 Indemnification for Third-Party Claims.** No obligation to indemnify which is set forth in this Article 10 shall apply unless the party claiming indemnification notifies the other party as soon as practicable (within thirty (30) days after the notice, or such shorter period as is required to avoid any prejudice in the claim, suit or proceeding) of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, and gives the other party the opportunity to control the response to and defense of such claim; provided, however, that the indemnitee shall have the right to participate in any legal proceedings to contest and defend a claim for indemnification involving a Third Party and to be represented by its own attorneys, all at the indemnitee's cost and expense; provided further, however, that no settlement or compromise of an asserted Third Party claim other than one for the payment of money may be made without the prior written consent of the indemnitee.

## **11. Limited Warranty.**

**11.1 Warranty, Limited Remedy and Exclusions.** EasyHRweb warrants that it will use commercially reasonable care in making the Software and the System available for Customer's use, and in performing any other services to be provided by EasyHRweb under this Agreement. Except for any termination rights expressly provided in Article 8, Customer's sole and exclusive remedy for any breach of any warranty not arising from EasyHRweb's gross negligence or willful misconduct, shall be requiring EasyHRweb to take such actions as reasonably necessary to correct the error, problem or quality of performance resulting in the breach of warranty.

**11.2 Disclaimer.** **THE WARRANTIES SET FORTH IN THIS ARTICLE 11, STATE EASYHRWEB'S SOLE AND EXCLUSIVE WARRANTY TO CUSTOMER CONCERNING THE SYSTEM AND THE SOFTWARE AND THE EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11.1, THE SERVICES AND SOFTWARE ARE PROVIDED STRICTLY "AS IS," AND EASYHRWEB MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY SOFTWARE, HARDWARE OR ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED. THESE WARRANTIES ARE LIMITED AND ARE THE ONLY WARRANTIES MADE BY EASYHRWEB. EASYHRWEB DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OR THAT ALL ERRORS WILL BE CORRECTED.**

## 12. General.

12.1 **Governing Law.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of Florida without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

12.2 **Forum.** All disputes arising under this Agreement shall be brought in the state or federal courts of the State of Florida. Such courts shall each have non-exclusive jurisdiction over disputes under this Agreement. Customer consents to the personal jurisdiction of the above courts.

12.3 **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by U.S. Mail, overnight courier or facsimile, and shall be deemed given upon delivery or five (5) days after deposit in the U.S. mail. Notices shall be sent to the parties at the addresses described on the first page of this Agreement or such other address as either party may designate for itself in writing. All notices to EasyHRweb must be addressed to its President to be effective.

12.4 **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

12.5 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

12.6 **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

12.7 **Use of Customer's Name.** Customer agrees that EasyHRweb may use Customer's name and may disclose that Customer is a user of EasyHRweb products in EasyHRweb advertising, promotion and similar public disclosures with respect to the Software; provided, however, that such advertising, promotion or similar public disclosures shall not indicate, without Customer's Superintendent's written consent, that Customer in any way endorses any EasyHRweb products.

12.8 **Nondisclosure.** Customer promises not to disclose the terms and conditions of this Agreement to any third party without the prior written consent of EasyHRweb.

12.9 **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

**12.10 Assignment.** Neither this Agreement nor any rights or obligations of Customer hereunder may be assigned, sold or otherwise transferred by Customer in whole or in part (including by merger, reorganization, consolidation, sale of all or any portion of the assets of Customer or change in control of Customer) without the prior written approval of EasyHRweb. For the purposes of this Section 12.11 (“Assignment”), a change in control means a change in the persons or entities that control fifty percent (50%) or more of the equity securities or voting interest of Customer as of the date of this Agreement. EasyHRweb’s rights and obligations, in whole or in part, under this Agreement may be assigned by EasyHRweb.

**12.11 Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

**12.12 Entire Agreement.** This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment or Exhibit signed on behalf of EasyHRweb and Customer by their duly authorized representatives.

**12.13 Subcontracting.** EasyHRweb may use subcontractors to assist in providing the services to be performed under this Agreement provided that EasyHRweb shall continue to be responsible for all acts and omissions of its subcontractors.

**12.14 Survival.** In addition to those provisions hereof which, by their terms, provide for survival following the termination of this Agreement, the provisions of Article 7, Article 9, Article 10, and this Article 12 shall survive the termination of this Agreement.

**12.15 Business Days; Time of Essence.** Unless otherwise specified in this Agreement, whenever any payment to be made or other action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, such payment shall be made or action taken on the next following Business Day. Time shall be of the essence of this Agreement.

**12.16 Compliance with Applicable Laws.** In carrying out its respective obligations and responsibilities under this Agreement, each of the Parties agrees to observe and comply with all applicable statutes, laws, regulations and requirements of governmental authorities having jurisdiction over the Parties or the subject matter of this Agreement.

**12.17 Priority.** The attached Schedules form part of this Agreement. If there is any apparent conflict or inconsistency between the provisions set forth in the body of this Agreement and the provisions set forth in any Schedule, the provisions set forth in the Schedule shall prevail. To the extent the text in the body of this Agreement provides a more specific description of a matter dealt with in a Schedule, the provisions set forth in the Schedule shall be interpreted in a manner so as to give effect to the specification provided in the body of the Agreement.

**12.18 Articles, Sections and Headings.** The division of this Agreement into Articles, sections, subsections, paragraphs and Schedules and the insertion of headings and an index are for

convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## Schedule 1.1

### **DEFINITIONS**

“*Act of Bankruptcy*” means, in respect of a Party, an event when such Party: (i) is dissolved, becomes insolvent, generally fails to pay or admits in writing its inability generally to pay its debts as they become due; or (ii) files a petition in bankruptcy or institutes any action under federal or state law for the relief of dollars or seeks to consents to the appointment of an administration, receiver, custodian, or similar official for the wind up of its business (or has such a petition or action filed against it and such petition action or appointment is not dismissed or stayed within (30) days).

“*Additional Services*” All system modifications would start with a System Modification Request (“SMR”). It is a formal request for a Change. Either party may submit such a request. The SMR will describe the requested Change, identify requester priority and need, specify timing and requested schedules, specify the additional fees to be paid EasyHRweb for the services which would result from the Change, and contain appropriate BPS management approvals and justification. Each SMR will be assigned a unique identification number. If executed by both parties, the SMR shall be implemented by EasyHRweb and BPS shall pay EasyHRweb the fees specified therein for the services covered by the Change.

“*Business Day*” means any day other than a Saturday, Sunday or EasyHRweb customary holidays.

“*Customer Data*” means data input by Customer into the System and derivative data resulting from the processing of such input data by the System.

“*Data Center*” means the operational facility(ies) owned or leased and controlled by EasyHRweb where any of the Equipment is located.

“*Equipment*” means the computers and other hardware which are operated or under the control of EasyHRweb (including operating systems or other software residing on such hardware) and which are used by EasyHRweb in connection with the operation of the Software utilized by Customer under this Agreement.

“*Maintenance Downtime*” means the time the Software is not accessible to Customer while maintenance is being done on the Software, the Equipment, the Data Center or any other equipment or facility utilized by EasyHRweb in providing Customer access to the Software, which maintenance is either (a) scheduled to be performed at the same time at specified intervals, (b) not scheduled at specified intervals but which Customer has been advised of at least two (2) hours in advance, or (c) otherwise scheduled in advance by agreement of EasyHRweb and Customer.

“*Party*” means Customer or EasyHRweb, as the case may be, and “*Parties*” means Customer and EasyHRweb collectively.

“*Person*” includes an individual or other legal or business entity, however designated or constituted.

“*Project Manager*”, Customer representative who shall work with the representatives of EasyHRweb regarding implementation/modification of the Software and who shall furnish EasyHRweb in a timely manner with all of the information reasonably deemed necessary by EasyHRweb to complete implementation/modification of the Software.

“*Required Equipment*” means such equipment and systems required to be installed at the Customer’s site in order for Customer to access the System and meeting the specifications set forth in Schedule 1.2, as such specifications may be revised from time to time by EasyHRweb.

“*Software*” means the EasyHRweb™ software, which is used by EasyHRweb under this Agreement, including all supporting documentation and media, together with all modifications, upgrades, corrections and enhancements thereto and all new versions and releases thereof. The functional description of the Software as of the Effective Date is attached as Attachment “A”.

“*System*” means, collectively, the Software and the Equipment, together with all replacements, modifications, upgrades and enhancements thereto made available by EasyHRweb hereunder.

“*System Access Fees*” shall mean the monthly Access Fees payable by Customer shown on Schedule 1.3.

“*System Maintenance*” Maintenance would be to obtain and install modifications, enhancements, changes or other maintenance necessary to correct suspected and documented errors such that each item of operating systems software for which EasyHRweb has operational responsibility operates in material compliance in accordance with its documentation and specifications. EasyHRweb will upgrade the hardware and equipment which comprise the Hosting environment if required (a) for the operation of any new release of the Baseline Licensed Software as modified by EasyHRweb, (b) to support data storage/usage requirements, (c) to support/enable operating systems and or database management software upgrades, (d) to materially comply with defined Service Levels. Error recovery (both high and low priority) needing implementation due to errors caused by entities other than EasyHRweb (BPS or one of it’s third-party vendors), may be deemed out of the scope of system maintenance and require payment of additional fees and expenses by BPS; as such, they shall be handled as a SMR.

“*Termination Date*” means the earlier to occur of (i) the expiration date of the Term and (ii) the effective date of an early termination of this Agreement permitted under this Agreement.

“*Third Party*” means any Person that is not a party signing this Agreement, including Customer’s users of the System.

“*Unscheduled Outage*” means a period of time during normal hours of operation that the Software is not available to Customer other than any period of Maintenance Downtime



Schedule 1.2

**REQUIRED EQUIPMENT**

**Hardware:**

Responsibility for any Client hardware, software, internet providers, and infrastructure that is used to access the Licensed Software;

Providing notice to EASYHRWEB of infrastructure maintenance and related service interruptions that affect the Licensed Software;

Maintaining contact lists of Client personnel to be used by EASYHRWEB personnel for routine and emergency situations;

Publishing processing calendars to accommodate training, holiday schedules, downtime, off-hours and non-business days, and other circumstances. Notifying EasyHRweb of scheduled changes at least (2) days prior to the scheduled change and jointly agree upon an appropriate schedule. In emergency situations, notify the EasyHRweb as soon as possible.

**Software:**

Employees need access to Netscape version 3.0 or higher, or Internet Explorer version 4.0 or higher and any other software required by Licensed Software customizations during the period of the contract.

Employer needs Netscape version 6.0 or higher, or Internet Explorer 6.0 or higher, Adobe Acrobat Reader 5.0 or higher, Microsoft Excel 97 or higher to view Excel files, an archival utility that incorporates “**RAR** algorithms”, and a valid email address

### Schedule 1.3

#### **SYSTEM ACCESS FEES**

##### **The System Access Fees are Payable Monthly as follows:**

The System Access Fees associated with the Employee Benefits Information System are \$4,500.00 per month for the provision of all system functionality and services as described in Attachment A, Description of Software for the School Board of Brevard County. The fee schedule shall be effective for 12 months beginning January 1<sup>st</sup> 2008 to December 31<sup>st</sup> 2008.

##### **Additional Services**

All Additional Services and modifications would start with a System Modification Request (“SMR”). It is a formal request for a Change. Either party may submit such a request. This formal document will be developed during the new contract phase jointly by the BPS and EasyHRweb. It will describe the requested Change, identify requester priority and need, specify timing and requested schedules, specify the additional fees to be paid EasyHRweb for the services which would result from the Change, and contain appropriate BPS management approvals and justification. Each SMR will be assigned a unique identification number. If executed by both parties, the SMR shall be implemented by EasyHRweb and BPS shall pay EasyHRweb the fees specified therein for the services covered by the Change. Error recovery (both high and low priority) needing implementation due to errors caused by entities other than EasyHRweb (BPS or one of its third-party vendors), may be deemed out of the scope of system maintenance and require payment of additional fees and expenses by BPS; as such, they shall be handled as a SMR.

The hourly rate for Additional Services will be charged at \$175.00 per hour.

Attachment A

Brevard County Public Schools  
Renewal Proposal

EasyHRweb™  
Job Center  
System Functionality Document

- I. Administrative/Hiring Authority Features  
(Features available based upon permissioning scheme employed)  
(Access to features based by group and/or user)
  - a. Applicant search
  - b. Applicant data can be viewed, edited, or deleted based upon permissions to include masking of sensitive data from view
  - c. Applicant demographic data editing
  - d. Electronic uploading, storage, and retrieval of documents by applicant or admin
  - e. Documents uploaded by applicant can be reviewed and either approved or declined and requested again by staff
  - f. Customizable applicant status flags
  - g. Assign newly employed applicants to employment groups to request post-hire documents
  - h. Manage online rated screening forms using the powerful ARTS application engine
  - i. Manage online rated interview forms the powerful ARTS application engine
  - j. Manage applications and their historical changes
  - k. Display/print-ready PDF-version application pre-population engine
  - l. Assign access to reports
  - m. Assign permissions to system functionality either by group or by user
  - n. Admin-only accessible downloadable documents library with or without pre-populated data
  - o. Powerful Query Engine
    - i. Filter candidates by any combination of fields on any combination of one or more employment applications
    - ii. Filter candidates by any combination of fields on any combination of one or more screening forms
    - iii. Filter candidates by any combination of fields on any combination of one or more interview forms
    - iv. Filter candidates by interest in job positions
    - v. Filter candidates by status flag states
    - vi. Store results of previous candidate searches
    - vii. Save search criteria
    - viii. Email notifications of candidates meeting saved queries
  - p. Flexible Job Advertisements
    - i. Custom job categories and/or sub-categories
    - ii. Custom fields per job category and/or sub-category
    - iii. Edit postings in place
    - iv. Upload job description documents to associate with job advertisements
    - v. Identify the required employment application per advertisement
    - vi. Identify which pre-hire documents are required to be submitted for the job application (via email, upload, or postal mail)
    - vii. Pull postings without deleting them to allow easy re-advertisement

- viii. Delete or pull postings while sending out custom messages to applicants about the reason for the removal (such as Position Filled)
  - ix. Automatic query creation to return any applicant expressing interest in a given posting
  - x. Contact information per posting with name, phone number, website hyperlinks, and/or hyperlinks for emails
- q. Receive notifications about documents uploaded by applicants
- r. Parameterized real-time reports
- s. Customization request section with professional workflow process
- II. Applicant Features
  - a. Self-service demographic data updating
  - b. View job positions by category of interest
  - c. Apply for more than one job at the same time
  - d. Informative job interest center
    - i. Displays jobs to which the applicant has expressed interest
    - ii. Displays documents that are required to be submitted prior to being hired for each specific job listed
    - iii. Displays employment application(s) required to be completed for each specific job listed
    - iv. Displays status of application (Not Started, Incomplete, Complete)
    - v. Displays which fields need to be completed to achieve a "Complete Status" when in an "Incomplete Status"
  - e. Employment Application Center
    - i. Custom applications for the organization
    - ii. Automatic importing of demographic data into employment application(s) with the use of system fields
    - iii. Allows multiple type of applications to be completed online by applicants
    - iv. Fields on the application may be designated as Required to Save, Required for Completion, and/or Query-able
    - v. Displays status of application (Not Started, Incomplete, Complete)
    - vi. Displays which fields need to be completed to achieve a "Complete Status" when in an "Incomplete Status"
    - vii. Application sections can be hidden/displayed based upon information in other sections
    - viii. Application fields can be designated as required based upon information provided in other fields of the application
    - ix. Supports "repeating fields" such as education experience records, work experience records, arrest records or any other such repetitive information gathering
    - x. Popups in response to designated click events
  - f. Notification Center
    - i. Emails can be sent on new notification activity
    - ii. Notifications of any activity on the applicant's account
    - iii. Notification content is not sent via email because email is not a secure way to send sensitive information
    - iv. Applicants are notified when documentation is required and when the status of their documentation changes
  - g. Upload of pre-hire or post-hire documents
  - h. Applicants can be informed that documents may only be emailed or sent via postal mail
  - i. Access a forms library of PDF documents (that can be pre-populated with demographic data) to be downloaded and/or printed by the applicant
- III. Network and Hardware Support
  - a. Data Center - Network infrastructure
    - i. Fully redundant, enterprise-class routing equipment used
    - ii. Routing equipment housed in a secured core routing room and fed by its own redundant power supply
    - iii. Fiber carriers enter at disparate points to guard against service failure via an accidental network line cut

- iv. 99.9% network uptime via connection to nine primary national network carriers
- b. Server - Hardware infrastructure
  - i. Web-server and database server operating on a high-performance dual dual-core Opteron machine
  - ii. Data is stored on SCSI RAID Level 5 for fault tolerance and is monitored closely for corruption and/or drive failure
  - iii. Tape-based backup with 2 week retention period
  - iv. Conditioned power provides indefinite, instantaneous uninterrupted power supply in case of a power outage to the building
  - v. A N+1 redundant HVAC (Heating Ventilation Air Conditioning) system ensures that a duplicate system immediately comes online should there be an HVAC system failure
  - vi. State-of-the-art fire suppression system designed to stop fires from spreading in the unlikely event one should occur
  - vii. All cables are securely tied down with cable racks suspended from ceilings, providing dual routes for all cables
- c. Data Center – Security
  - i. Keycard protocols, biometric scanning protocols and round-the-clock interior and exterior surveillance monitor access
  - ii. Only authorized personnel are granted access credentials. No one else can enter the production area of the data center without prior clearance and an appropriate escort
  - iii. Every employee undergoes multiple and thorough background security checks before employed