



**HRZ® CLOUD APPS**  
**General Terms and Conditions**  
Version Eff: January 4, 2024

# HRZ<sup>®</sup> CLOUD APPS

## General Terms and Conditions

### ARTICLE 1 DEFINITIONS

1.1 Definitions. Capitalized terms not otherwise defined when first used herein have the meanings set forth below:

(a) “Agreement” means these General Terms and Conditions and the Order Form between Customer and HRIZONS to which they have been made a part. This Agreement, terms and conditions supersede and replace any prior agreements, terms and conditions between the parties and their predecessor entities.

(b) “Customer Content” means all electronic content submitted by Customer to the Hosted Services, but specifically excludes: (i) any suggestion, enhancement requests, recommendations of other feedback provided by Customer, including Users, relating to the operation, features or functionality of the Hosted Services; and (ii) Usage Data.

(c) “Device” means the supported devices described in the Documentation.

(d) “Documentation” means all written or electronic instructions, manuals, functional specifications, user guides and other materials related to use of the Hosted Services, which may be provided by HRIZONS to Customer hereunder, including any new versions or updates thereto.

(e) “Hosted Services” means a subscription to access HRIZONS’ proprietary HRZ<sup>®</sup> Cloud App (HCA) solutions which is hosted by HRIZONS on a software-as-a-service basis and any content made available by HRIZONS through such software, as described in the Documentation, including any Updates made available by HRIZONS thereto during the applicable Subscription Term, in each case as subscribed to under an Order Form solely for the Permitted Use for the applicable Subscription Term.

(f) “HRIZONS IP” means the Hosted Services (including all software, Updates and content therein), the software and systems supporting the Hosted Services, and the software, hardware, Documentation, Usage Data and other materials, processes, know-how and the like owned or utilized by and created by HRIZONS in the provision of the Hosted Services, and all intellectual property rights therein.

(g) “Law” means any local, state, national and/or foreign law, treaties, regulations and/or orders applicable to a respective party.

(h) “Order Form” means the ordering documents provided by HRIZONS that are entered into between Customer and HRIZONS from time to time to detail Hosted Services purchased, pricing and the Subscription Term, as well as any additional third party license terms applicable to the purchase.

(i) “Permitted Use” means solely (i) for Customer’s own internal business purposes in accordance with the Documentation and this Agreement and not for the benefit of any third parties, directly or indirectly, and not for any personal uses, (ii) for the scope specified in the Order Form(s), which may include limitations based on number of employees, concurrent Users and other limitations all as stated in the Order Form(s), and (iii) in accordance with all applicable Laws.

(j) “Subscription Term” means the term for the Hosted Services purchased, as stated in an Order Form and as may be renewed, unless earlier terminated as set forth therein or herein.

(k) “Territory” means the United States.

(l) “Updates” means any bug fixes, upgrades, changes, enhancements, and refinements to the Hosted Services that HRIZONS makes available to Customer and its other customers of the Hosted Services. Updates do not include any new software that has a form, fit or function that is materially different that HRIZONS may sell or license from time to time.

(m) “Usage Data” means statistical data that HRIZONS collects from time to time through Customer’s and other customers’ use of the Hosted Services, or HRIZONS websites, including without limitation number of users accessing the Hosted Services, types of users, length of visits, repetition of visits etc.

(n) “User” means an individual who is authorized by Customer to use the Hosted Services and who has been supplied user identifications by Customer (or by HRIZONS at Customer’s request) to access the Hosted Services. Users may only be Customer employees or authorized contractors listed by name as registered Users. For purposes of Agreement, a contractor shall be defined as an individual hired to perform a specified function on behalf of the Customer and is not an employee of a vendor that would be considered to offer competitive products to the Hosted Services.

## **ARTICLE 2 HOSTED SERVICES**

### **2.1 Provision of Hosted Services.**

During each Subscription Term, and subject to the terms and conditions of this Agreement and contingent upon performance by Customer of Customer’s obligations herein and in each Order Form(s), HRIZONS shall use commercially reasonable efforts to make available to Customer the Hosted Services, as set forth in the HCA Service Level Agreement (“SLA”). Copies of the current SLA are found at <https://hrizons.com/service-level-agreement> and are made a part hereof. The Hosted Services include support and maintenance as described in Exhibit A.

(a) The Hosted Services can be accessed through supported browsers. HRIZONS will deliver the initial access credentials to Customer. Hosted Services will be deemed accepted by Customer upon such delivery.

(b) HRIZONS has no obligation to monitor Customer’s use of the Hosted Services; however, HRIZONS reserves the right, at all times, to monitor such use, and to review, retain and disclose any information as necessary to ensure compliance with the terms of this Agreement, and to satisfy or cooperate with any applicable law, regulation, legal process or governmental request.

(c) Any professional services required to implement and configure the Hosted Services, and upload the Customer Content, shall be performed under separate agreement between HRIZONS and Customer.

### **2.2 License Grant; Use.**

(a) Subject to the terms and conditions of this Agreement, and provided Customer remains current on payments due for the applicable Subscription Term, HRIZONS grants to Customer a nonexclusive, nontransferable, limited license, without the right to sublicense, to access and use the Hosted Services and Documentation in the Territory for the Permitted Use.

### **2.3 Restrictions on Use.**

(a) Except as specifically set forth herein, HRIZONS reserves all rights in and to the Hosted Services and all other HRIZONS IP. This Agreement does not grant Customer or any User the right to incorporate, merge, integrate or interface the Hosted Services into any third party or self-developed products or to allow access to the HRIZONS IP, in whole or in part, by other software or other products or services for any purpose without prior written approval of HRIZONS.

(b) . Without limiting the foregoing, Customer shall not, and shall not permit any User or other third party to: (i) access and use Hosted Services in excess of what has been purchased under an Order Form; (ii) allow access to the HRIZONS IP to any third party, including any contractor that is not a User, except as expressly permitted in advance in writing by HRIZONS and then subject to the restrictions in such permission; (iii) reproduce, publish, modify, create derivative works of, or translate the HRIZONS IP or attempt to reverse engineer, disassemble, or access the source code for, any of the HRIZONS IP; (iv) bypass or breach any security device or protection used by the Hosted Services or access or use the Hosted Services other than through the use of then-valid access credentials; (v) introduce any “malware,” such as, but not limited to, viruses, worms, and Trojan Horses; (vi) use deep-links, page scrapes, web crawlers, bots, worms,

or other such programs, algorithms or methodologies; (vii) send, store, post, transmit or link from infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (viii) damage, disable, undermine, overburden, interfere with, disrupt, or impair the Hosted Services or the servers on which they run or interfere with any other party's use of the Hosted Services; (ix) use any of the logos, trademarks, service marks, or other indicators of origin appearing on the Hosted Services without express written permission; (x) attempt to gain access to the Hosted Services or its related systems or networks in a manner not set forth in the Documentation; (xi) bypass or breach any security device or protection used by the Hosted Services or access or use the Hosted Services other than through the use of then-valid access credentials; ; (xii) use the HRIZONS IP in the operation of a service bureau or on an application or software as a service provider basis to support anyone; (xiii) rent, lease, sublicense, sell, assign, market, transfer, distribute, resell or loan the HRIZONS IP by any means to any third party; (xiv) export or re-export, directly or indirectly, the HRIZONS IP into any country prohibited by the applicable laws and regulations in the United States; or (xv) design or create any software program or system or content, in whole or in part, with features or functions similar to the features or functions of any of the HRIZONS IP through use, evaluation, or viewing of the HRIZONS IP. In addition, the applicable Order Form may contain restrictions on the manner of use of the Hosted Services, to which Customer hereby agrees. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by HRIZONS regarding future functionality or features.

2.4 Authorized Users. Customer shall be responsible for ensuring that all Users are authorized to access the Hosted Services, and are informed of, and abide by, the terms and conditions of the licenses granted to Customer hereunder and the other terms, conditions and restrictions set forth in this Agreement. Customer shall keep an accurate list of all Users.

2.5 Passwords. Each User must complete HRIZONS' registration process prior to access to and use of the Hosted Services. As part of the registration process the User must provide HRIZONS with complete and accurate information as prompted by the applicable registration form. User access shall be granted as outlined in the Order Form under User Subscription Categories. Customer shall ensure that all data supplied in establishing User accounts is accurate and complete and that Users shall maintain the confidentiality of their user names and password.

2.6 Suspension; Termination of Users. If HRIZONS has reasonable grounds to suspect that registration data is inaccurate or incomplete or that a User or Customer has violated or threatened to violate the terms and conditions of this Agreement, HRIZONS may suspend or terminate a User account, disable the password and refuse any and all current and future use of the Hosted Services by such User. Customer shall immediately notify HRIZONS of any known or suspected unauthorized use of a User's password, User name or account or any other breach of security or unauthorized access to or use of the Hosted Services. HRIZONS also reserves the right to temporarily suspend provision of the Hosted Services: (a) with prior written notice to Customer if HRIZONS determines in its reasonable discretion that such suspension is necessary to comply with any applicable Law; or (b) immediately, if HRIZONS determines in its reasonable business judgment, that the performance, integrity or security of the Hosted Services is being adversely impacted or in danger of being compromised, as a result of Customer's or any User's access or use.

2.7 Acquisition and Support of Hardware and Third Party Software. Customer shall be solely responsible for the acquisition, installation and maintenance of all Devices, and hardware, third party software and telecommunications lines and related services necessary to access and use the Hosted Services and the Devices, as well as the other items specified in an Order Form.

### **ARTICLE 3 RESPONSIBILITIES**

3.1 HRIZONS Responsibilities. HRIZONS shall retain sole: (a) editorial discretion with respect to the content and functionality of the Hosted Services and the information contained therein and retains the right

to revise, supplement or discontinue the Hosted Services, or any portion thereof or information contained therein; and (b) technical control and discretion with respect to the maintenance and operation of the Hosted Services.

### 3.2 Customer's Responsibilities.

(a) *Scope of Customer Content.* Customer acknowledges that the purpose of the Hosted Services is to permit the hosting and manipulation of HRZ Cloud App Services. The Hosted Services are not intended to be a repository for any personally identifiable information, and, except as requested in the registration pages for Users, under no circumstances shall Customer Content delivered to the Hosted Services include any personally identifiable information, including without limitation social security numbers, passport numbers, national identification numbers, healthcare data, banking data, credit card data or other similar data that is subject to higher levels of protection at law (collectively, "Sensitive Data"). Customer shall always keep a copy of its own Customer Content and shall not rely on HRIZONS to provide the only copy. HRIZONS shall have no liability under this Agreement to Customer or any third party, including Users, for Sensitive Data or its misuse or disclosure.

(b) *Licenses to Customer Content.* Customer hereby grants, now and in the future, to HRIZONS a nonexclusive, transferable (only pursuant to Section 9.5), sublicensable, worldwide, royalty-free and fully paid up license to upload, synchronize, reproduce, distribute, display, host, modify and create derivative works of the Customer Content solely as needed in order for the provision of the Hosted Services for Customer hereunder during the Subscription Term and until Customer Content is deleted as specified herein.

(c) *Customer Responsibility.* Customer acknowledges that HRIZONS makes no independent assessment or evaluation of any Customer Content, nor does HRIZONS examine the sources of the Customer Content to determine whether it may incur liability to third parties from delivery or use thereof as permitted herein. Customer shall be solely responsible for the accuracy, quality, integrity and legality of Customer Content and of the means by which Customer Content was acquired. Customer covenants that: (i) the delivery to HRIZONS and use, as permitted herein, of the Customer Content complies with all applicable Laws; and (ii) neither the Customer Content, nor its delivery or use as contemplated hereunder, shall infringe any intellectual property rights or other proprietary, publicity or privacy rights of any third party, be in breach of this Agreement, or violate Customer's or other applicable third parties' privacy policies. HRIZONS is responsible for complying with all applicable Laws which pertain solely to HRIZONS' operation of its business and/or regulate HRIZONS in its capacity as a provider of software-as-a-service services but the foregoing does not apply to any Customer Content, which is controlled entirely by Customer and is the responsibility of Customer.

## **ARTICLE 4 FEES**

4.1 Fees. Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (a) fees are quoted and payable in US dollars, and (b) fees are based on Hosted Services licensed and not actual usage. Except as specifically set forth to the contrary under 7.5 "Infringement Indemnification" and Section 8.3 "Termination for Cause", all payment obligations under any and all Order Forms are non-cancelable, so all fees are due for the entire Subscription Term even if this Agreement is terminated early, and all payments made are non-refundable. The license rights set forth on any respective Order Form cannot be decreased during the Subscription Term.

4.2 Invoicing and Payment. Customer is responsible for providing and maintaining complete and accurate billing and contact information for the Hosted Services. HRIZONS will invoice for all Hosted Services upon provision of Hosted Service, either annually or in accordance with any different billing frequency stated in the applicable Order Form. Unless otherwise stated in the Order Form, invoices are due net 30 days from the invoice date. Any disputes over fees must be delivered to HRIZONS in writing within 30 days of receipt of the disputed invoice, and the parties shall use commercially reasonable efforts to

promptly resolve the dispute. HRIZONS may temporarily suspend provision of the Hosted Services with prior written notice to Customer if fees, whether disputed or not, are not paid in full within 60 days of the date of invoice.

4.3 Overdue Charges. If any fees or expenses are not received from Customer by the due date, then such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Customer shall be responsible for any and all collection and attorneys' fees incurred with respect to the collection of funds owed by Customer to HRIZONS.

4.4 Taxes. Unless otherwise stated, HRIZONS fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If HRIZONS has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides HRIZONS with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, HRIZONS is solely responsible for taxes assessable against it based on HRIZONS' income, real property and employees.

## **ARTICLE 5 OWNERSHIP**

5.1 Release. Upon written consent, Customer may provide consent to HRIZONS to include Customer's name on a list of HRIZONS' customers that may be distributed to or shared with potential and other customers of HRIZONS.

5.2 Ownership of Customer Content. As between Customer and HRIZONS, and subject to the limited license set forth in Section 3.2(b), above, Customer retains ownership of all right, title and interest in and to all Customer Content, subject to the limited licenses granted to HRIZONS hereunder.

5.3 Ownership of HRIZONS IP. Customer agrees that, as between the parties, HRIZONS shall retain ownership of all right, title and interest (including all intellectual property rights) in and to the HRIZONS IP, including any Updates, customizations, amendments, additions, modifications, enhancements, and derivatives thereof. The entire content of the Hosted Services and the selection, coordination, arrangement, and enhancement thereof, is protected under the copyright laws of the U.S., international treaties and other intellectual property laws (including without limitation the copyright in the selection, coordination, arrangement and enhancement of all content). Customer shall not remove, obscure, deface or otherwise conceal any copyright notices, logos or other indicia of ownership contained in the HRIZONS IP.

5.4 Suggestions. HRIZONS shall have an exclusive, royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate in the Hosted Services any suggestion, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation, features or functionality of the Hosted Services.

## **ARTICLE 6 CONFIDENTIALITY**

6.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to

the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

6.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (a) the Receiving Party shall only use the Confidential Information for the purposes set forth in this Agreement, (b) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to protect the Confidential Information of the Disclosing Party, and (c) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, vendors, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. The foregoing is not intended to expand or limit the scope of license rights granted herein.

6.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

## **ARTICLE 7 LIMITED WARRANTY; DISCLAIMERS**

7.1 Limited Warranty. Subject to the terms of this Article 7, HRIZONS warrants that: (a) the Hosted Service shall perform materially in accordance with the Documentation; and (b) the Documentation shall be materially complete and accurate in its reflection of the operation of the Hosted Service; provided that Customer complies with its obligations under this Agreement.

7.2 Remedies. HRIZONS' entire liability and Customer's exclusive remedy relative to the warranties above shall be for HRIZONS, at its sole discretion, to (a) promptly correct the defect following the terms attached as Exhibit A hereto at no additional charge or (b) terminate this Agreement, if the defect is not corrected (including via a workaround) within forty-five (45) days from notice thereof. To receive warranty remedies, Customer must promptly report deficiencies in writing to HRIZONS, but no later than thirty (30) days of the first date the deficiency is identified by Customer.

7.3 Limitations on Limited Warranties. The above limited warranties are null and void in the event: (a) Customer or any third party modifies or changes the Hosted Services in any way other than as contemplated herein or as instructed by HRIZONS; (b) failure of the Hosted Services has resulted from accident or misapplication by Customer; (c) Customer fails to use the Hosted Services in accordance with the Documentation and this Agreement; (d) errors and malfunctions are caused by third-party hardware, software or services; (e) Customer uses incorrect procedures or data; or (f) nonperformance is caused by any cause not attributable to HRIZONS, including without limitation caused by Customer or any third party software or hardware.

7.4 Disclaimer. EXCEPT FOR THE WARRANTY EXPRESSLY SET FORTH IN SECTION 7.1, THE HOSTED SERVICES AND DOCUMENTATION ARE PROVIDED "AS-IS" WITH NO WARRANTIES; AND HRIZONS EXPRESSLY EXCLUDES AND DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OPERABILITY, CONDITION, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF SYSTEM INTEGRATION, SUITABILITY, AND THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, AND WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE. HRIZONS

DOES NOT WARRANT THAT ACCESS TO, OR OPERATION OF, THE HOSTED SERVICES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, THAT ALL ERRORS WILL BE CORRECTED, OR THAT THE HOSTED SERVICES WILL SATISFY CUSTOMER'S OR ANY THIRD PARTY'S REQUIREMENTS. Any statements made by a third party, including authorized partners of HRIZONS, are not warranties of HRIZONS. HRIZONS is not required to maintain compatibility between the Hosted Services and other software.

7.5 Infringement Indemnification. HRIZONS shall defend or otherwise dispose of, at its sole cost and expense, any claim, suit or proceeding brought against Customer which alleges that the use of the Hosted Services as licensed hereunder and used in accordance with the terms of this Agreement, infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of the third party claimant, and shall pay the amount of any judgment or settlement to which HRIZONS agrees, provided that Customer gives HRIZONS prompt written notice of such claim, suit or proceeding and gives HRIZONS full information, cooperates fully and gives reasonable assistance in its defense or settlement. HRIZONS shall be entitled to solely control and direct such defense and to settle or otherwise dispose of such claim, suit or proceeding as it sees fit. HRIZONS shall not be required to indemnify Customer in the event of: (i) modification of the Hosted Services by or via Customer in conflict with Customer's obligations or as a result of any prohibited activity; (ii) use of the Hosted Services in a manner inconsistent with the Documentation; (iii) use of the Hosted Services in combination with any other product or service not provided by HRIZONS if such combination results in the claim; or (iv) use of the Hosted Services in a manner not otherwise contemplated by this Agreement; (collectively, the "Infringement Exceptions"). If an injunction is obtained in such action enjoining Customer's use of the Hosted Services, HRIZONS shall have the right, at its option and expense, to either (a) obtain for Customer the right to continue to use the Hosted Services, (b) promptly replace or modify the Hosted Services with or to a product with substantially equivalent functionality, or, if (a) and (b) are not practical, terminate this Agreement and HRIZONS' sole liability (in addition to indemnification as set forth above) shall be to refund any prepaid fees paid by Customer for such Hosted Services.

7.6 Indemnification by Customer. Customer shall defend, indemnify and hold HRIZONS and its officers, directors and employees harmless from any claims, suits, damages, liabilities, actions and losses (including reasonable attorney's fees and expenses) arising from or resulting from (a) Customer's (including a User's) misuse or unauthorized use of any of the Hosted Services, (b) any claims relating to the Customer Content, except to the extent the claims arise from HRIZONS' negligence, or (c) the Infringement Exceptions.

#### 7.7 LIMITATION OF LIABILITY.

(a) *Delay.* HRIZONS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN UPDATING THE HOSTED SERVICES OR PERFORMANCE UNDER THIS AGREEMENT.

(b) *Consequential Damages.* IN NO EVENT SHALL HRIZONS BE LIABLE UNDER OR AS A RESULT OF THIS AGREEMENT TO CUSTOMER, USERS OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST OR CORRUPTED CUSTOMER CONTENT OR DATA, LOSS OF USE OF CUSTOMER CONTENT OR DATA, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY), OR ANY OTHER SIMILAR DAMAGES, UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY), EVEN IF HRIZONS HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

(c) *Limitation of Liability.* NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL HRIZONS' TOTAL, CUMULATIVE LIABILITY FOR ANY LOSS, COST, CLAIM, LEGAL ACTION OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THIS



AGREEMENT (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY) EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO HRIZONS DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LOSS, COST, CLAIM, LEGAL ACTION OR DAMAGE UNDER THE ORDER FORM TO WHICH THE CLAIM RELATES.

(d) No claim, regardless of form, which in any way arises out of this Agreement, may be made or brought by Customer or Customer's representatives more than two (2) years after the basis for the claim becomes known to Customer.

(e) *Application.* THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7.7 AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OF THE EXCLUSIVE REMEDIES PROVIDED FOR UNDER THIS AGREEMENT.

## **ARTICLE 8 TERM; TERMINATION**

8.1 Term of Agreement. The term of this Agreement ("Term") will commence on the Effective Date and this Agreement will remain in effect until terminated by HRIZONS or Customer in accordance with this Article 8.

8.2 Subscription Term. Each license commences on the start date specified in the applicable Order Form and continues for the Subscription Term specified therein. The price of each and the length of each renewal term shall be negotiated by both parties in good faith 180 days prior to the date that the then current Subscription Term terminates. Either party has the right not to renew at its discretion. Agreement shall be by separate written agreement or amendment to this Agreement in writing signed by both parties.

8.3 Termination for Cause. If either party materially breaches any of the terms or conditions of this Agreement, and fails to cure such breach within 30 days after written notice thereof, the other party shall have the right to terminate this Agreement (including all Order Forms) with written notice. Upon any termination by Customer pursuant to the preceding sentence, HRIZONS shall refund Customer any prepaid fees for the licenses that were to be provided after the date of termination. Upon any termination by HRIZONS pursuant to the first sentence, Customer shall pay HRIZONS the full amount of fees due for the remainder of the agreed Subscription Term.

8.4 Automatic Termination. On termination or non-renewal of the last-to-terminate of all Order Forms hereunder, this Agreement shall automatically terminate.

8.5 Effect of Termination. On termination of this Agreement, without limiting either party's rights and remedies at law or in equity, but subject to any exclusive remedies herein:

(a) termination of this Agreement for any reason shall not affect any past sums due under this Agreement;

(b) if termination is by Customer under Section 8.3, then no additional future sums shall be due for licenses hereunder. For all other terminations under this Agreement, on termination of this Agreement, no refunds shall be given and all fees that would have become due during the applicable Subscription Term shall be accelerated and shall become due on termination;

(c) except for the perpetual license in Section 5.4, all licenses hereunder shall immediately terminate and Customer shall, and shall ensure that all Users shall, immediately cease use of all Hosted Services;

(d) each party upon written request shall promptly return to the other party any Confidential Information of the other party in whatever form or media originally provided; and

(e) upon request by Customer made within 30 days after the effective date of termination of this Agreement, HRIZONS will make available to Customer a download of Customer Content as of the termination date in a format determined by HRIZONS. After such 30-day period, HRIZONS shall have no

obligation to maintain or provide any Customer Content and shall thereafter, unless legally prohibited, delete all Customer Content in HRIZONS systems or otherwise in its possession or control over time.

8.6 Surviving Provisions. Articles 1, 4, 5, 6 and 9, Sections 2.3, last sentence of 3.2(a), 7.4, 7.5, 7.6, 7.7, 8.5 and 8.6 and any terms stated to survive in the Order Forms shall survive any expiration or termination of this Agreement.

## **ARTICLE 9 MISCELLANEOUS**

9.1 Notices. All notices permitted or required to be given hereunder shall be delivered personally or sent by telecopy or registered or certified mail, postage pre-paid, return receipt requested, addressed to the addresses of the parties as referenced in the Order Form, or as may be designated by each from time to time pursuant to this provision. Notices so given shall be effective (a) upon the date of personal delivery, (b) if sent by telecopy, concurrently with the transmission thereof if the sender's machine produces a transmission report without notice of a communication fault, or (c) on the third business day following the date on which such notice is mailed by registered or certified mail.

9.2 Language. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. The official version of this Agreement is in English.

9.3 Governing Law. The Agreement shall be governed by and construed in accordance with laws of the State of Minnesota, without reference to its conflict of laws rules. The UN Convention on Contracts for the International Sale of Goods does not apply to this Agreement

9.4 Dispute Resolution. In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Agreement, the performance of either party under this Agreement, or any other matter that is in dispute between the parties related to this Agreement, upon the written request of either party, the parties will meet for the purpose of resolving such dispute. The parties agree to discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto. No formal proceedings for the resolution of such dispute may be commenced until either party concludes in good faith that the applicable resolution through continued negotiation of the matter in issue does not appear likely, but no more than 90 days from initiation. All disputes which cannot be settled in the manner herein before described (any such dispute is referred to herein as a "Dispute") will be settled by one arbitrator (the "Arbitrator") in binding arbitration in Minneapolis, Minnesota or such other place as the parties may mutually agree, under the Rules of the American Arbitration Association ("AAA") (or any successor thereto). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, as amended from time to time, shall govern the arbitrability of all Disputes. All expedited procedures prescribed by the AAA Rules shall apply. The Arbitrator's decision and award shall be final and binding and judgment may be entered in any court having jurisdiction thereof. Each party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the Arbitrator but the Arbitrator shall have the discretion to award costs and attorney's fees. The Arbitrator shall be appointed by mutual agreement of the parties. If the parties cannot agree upon an Arbitrator, then each shall appoint one qualified arbitrator and the two qualified arbitrators shall select the Arbitrator. No person may be appointed as the Arbitrator unless he or she is independent of the parties, is skilled in the subject matter of the Dispute, is engaged in the practice of law, and is not directly or indirectly carrying on or involved in a business being carried on in competition with the business of the parties. The foregoing shall not affect either party's right to terminate hereunder or to seek equitable relief under Section 9.10 Equitable Relief. Any amendment or modification of this Agreement or waiver of any provision of this Agreement shall be in writing and executed by both parties. The failure of HRIZONS or Customer to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any provision hereof or the right of a party to thereafter enforce each and every provision of this Agreement. No waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non-fulfillment.

9.5 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law, change of control or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, HRIZONS may assign this Agreement in its entirety (including all Order Forms), without consent of Customer, to its affiliate or in connection with a change in control, merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or business. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

9.6 Entire Agreement. This Agreement is composed of, in the following order of interpretation, (a) this Agreement, (b) all Order Forms between the parties referencing this Agreement, (c) the Privacy Policy, and any other policies and documents incorporated by reference into any of the foregoing. Notwithstanding the foregoing, (i) to the extent of any conflict or inconsistency between this Agreement and HRIZONS' Privacy Policy, the terms of HRIZONS' Privacy Policy shall prevail for the subject matter covered therein, and (ii) if there is a conflict between the terms and conditions of this Agreement and those of an Order Form, the terms and conditions of this Agreement govern those of the Order Form, except and to the extent that the Order Form expressly states that such term or condition or the Order Form in its entirety is intended to prevail. This Agreement (as described above) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer's purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

9.7 Force Majeure. Neither party will be liable for any failure to perform (except for payment of monies due hereunder) due to unforeseen circumstances or causes beyond its reasonable control, including, but not limited to, acts of God, acts of government, acts of terrorism, civil unrest, embargoes, acts of civil or military authorities, fire, flood, earthquakes, accident, strikes, inability to secure transportation, facilities, fuel, energy, labor or materials, or Internet service provider failures or delays. In the event of force majeure, time for delivery or other performance will be extended for a period equal to the duration of the delay caused thereby.

9.8 Independent Contractors. In all matters relating to this Agreement, HRIZONS and Customer shall act as independent contractors. Neither party will represent that it has any authority to assume or create any obligation, expressed or implied, on behalf of the other party, or to represent the other party as agent, employee, or in any other capacity.

9.9 Severability. The terms and conditions stated herein are declared to be severable. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, it shall be enforced to the maximum extent possible. The validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9.10 Equitable Relief. The parties each acknowledge that any breach of license terms or restrictions or of Article 6 of this Agreement cannot reasonably or adequately be compensated by damages in an action at law and that a breach or threatened breach of such provision shall cause the non-breaching party irreparable injury and damage. The parties, therefore, agree that the non-breaching party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of license terms or restrictions or of Article 6 of this Agreement; provided, however, that no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against the pursuit of other legal or equitable remedies in the event of such a breach.

9.11 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement.

9.12 Cumulative Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**Exhibit A**  
**Support & Maintenance**

This Exhibit A to the Agreement includes the support and maintenance terms that apply to the Hosted Services.

1. **Definitions.** The following terms have the meanings ascribed thereto. All other capitalized terms shall have the meaning set forth in the Agreement:

(a) **“Support”** means HRIZONS support that is specialized for the Hosted Services product and is focused on technical issue resolution. Support does not include (i) assistance to Customer for problems encountered as a result of network systems, third party software, computer environment or hardware utilized by Customer that was not purchased from and implemented by HRIZONS, (ii) training services to Users, (iii) services related to software installation or upgrades in test, training, production environments, (iv) technical services, (v) customization services, (vi) consulting services,, and (vii) any other optimization/re-configuration related services. The services set forth in the forgoing items (i) to (viii), if provided, will be set forth in a separate agreement or Statement of Work.

(b) **“Maintenance”** means the installation or provision by HRIZONS of any Updates which are released by HRIZONS during the Subscription Term.

2. **Support.**

(a) **Designated Contacts.** HRIZONS’ obligation to provide Support hereunder shall extend only to requests for support received from key individuals at Customer location to be designated by Customer in writing. Additional assistance beyond the services specifically described in the Order Form, if requested by Customer and agreed by HRIZONS, may be provided subject to additional professional service fees being charged to Customer at HRIZONS’ standard service rate(s), plus reasonable travel and living expenses if required.

3. **Maintenance.** HRIZONS will install all Updates which are developed and generally made available by HRIZONS to its licensees during the Subscription Term. Nothing in this Agreement shall obligate HRIZONS to provide any Update at any given time.

4. **Term/Renewal.** Support and maintenance are only provided during the Subscription Term.

5. **Electronic Provision of Support and Maintenance.** Customer shall obtain and maintain a satisfactory connectivity (per HRIZONS’ hardware/software specifications) and remote communications software as a condition of HRIZONS providing support and maintenance hereunder.

6. **Support/Maintenance for Out-of-Date Releases.** HRIZONS shall have the right, in its sole discretion, to cease providing support and maintenance for any release other than the most current release.

7. **Customer Responsibilities.** Customer shall be responsible for the following:

(a) If Customer believes that the Hosted Services are not conforming in accordance with the Documentation and this Agreement, Customer shall immediately notify HRIZONS regarding any such nonperformance and shall provide a listing of output and such other data as may be required by HRIZONS to reproduce operating conditions as existed when the nonperformance occurred.

(b) Customer grants to HRIZONS the nonexclusive right to use Customer Content for the sole purpose of and only to the extent necessary for HRIZONS to provide the Hosted Services.

(c) Customer shall be responsible for entering its Customer Content into the Hosted Service and Customer shall be responsible for the maintenance of the Customer Content supplied by it. It is also understood that some data may be imported or scheduled based on Customer integrations as part of the service offering, those provided and overseen by HRIZONS are excluded. Customer hereby represents and warrants to HRIZONS that the Customer Content is free of all viruses, Trojan horses, and comparable elements, which could harm the systems or software used by HRIZONS or its subcontractors to provide the Hosted Service.

(d) Customer agrees that it has collected and shall maintain and handle all Customer Content in compliance with all applicable data privacy and protection laws, rules and regulations.

(e) Customer is responsible for the connection to the Hosted Service, including the Internet connection.

(f) Customer shall change all passwords used to access the Hosted Service at regular intervals. Should Customer learn of an unauthorized third party having obtained knowledge of a password, Customer shall inform HRIZONS thereof without undue delay and promptly change the password.

In the event Customer fails to comply with any of the foregoing, Customer shall have thirty (30) days from notification by HRIZONS to rectify the problem. If the problem is not rectified, HRIZONS shall have the right at any time after such period to terminate the Agreement.

8. **Excluded Hosted Services.** The following services are outside the scope of HRIZONS' Support and Maintenance services and will be provided only upon separate agreement between the parties:

(a) Hosted Services which become necessary as a result of the failure by Customer to comply with its obligations in Section 7 above; and

(b) Hosted Services performed at Customer's premises, unless the parties mutually agree otherwise.

9. **Disclaimer.** HRIZONS makes no warranty as to any support or maintenance provided pursuant to this Exhibit. All warranties related to the Hosted Services are set forth in the Agreement.