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**SOFTWARE MAINTENANCE AGREEMENT  
& END USER LICENSE AGREEMENT**

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**Lexington Fayette Urban County Government**  
498 Georgetown St  
Lexington, Kentucky 40508

**Terms:**     *January 1, 2017*     through     *December 31, 2017*

**Year into 5 Year Guarantee**     1

<b>License:</b>	<b>Users:</b>	
Horizon Licensing	3	\$ 187.50
Software Maintenance (Help Desk)		351.00
Software Maintenance (Software Updates)		88.00
Total Contract		<u>\$ 626.50</u>

**Notes:**     Visual Dataflex Licensing will be billed separately

**Horizon Software Modules**

*Rep Payee*



# HORIZON

INFORMATION | SYSTEMS

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## MAINTENANCE AGREEMENT

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Customer and Horizon Information Systems Inc., (Horizon) agree that the terms and conditions in this Agreement apply to any Standard Software and any Custom Software specified on the front of this agreement. In addition to other terms and conditions in Section A of this Agreement, Section B applies to the Standard Software, if any specified on the front of this Agreement, and Section C applies to the Custom Software, if any specified on the front of this Agreement.

**Renewal:** This agreement will be automatically renewed for successive 1-year term(s) upon Horizon's receipt of payment of fees in effect at the time of payment. Either party may cancel this agreement on thirty days prior written notice to the other party. Such payments are paid in advance for services to be rendered for the applicable term.

### **Section A. TERMS AND CONDITIONS APPLICABLE TO STANDARD SOFTWARE AND CUSTOM SOFTWARE.**

#### **1. Terms of Agreement**

In consideration of the Customer's payment of the 1-year maintenance fee, Horizon agrees to provide the services outlined in this Agreement during the initial 1-year term and any extension thereof. Horizon will render its initial billing along with this Agreement.

#### **2. Normal Service Coverage Period and Horizon Response time**

Horizon agrees to provide software maintenance services described in this Agreement between the hours of 8:30 A.M. and 5:00 P.M. EST, Monday through Friday, excluding Horizon holiday periods (hereafter "Service Coverage Period".) For maintenance required under this Agreement, Horizon agrees to provide an average response time.

#### **3. Maintenance Charges**

In addition to the annual maintenance charge, if Customer requests service outside the scope of this Agreement, Customer agrees to pay the Time and Materials charges then in effect for such service. (See Attached Rate Schedule)

4. **Payment**

Payment is due 30-days from invoice date for the initial and renewal coverage periods. Horizon will render its initial and renewal billing along with this Agreement. Customer shall reimburse Horizon all cost incurred in connection with the Services rendered. Reimbursable costs include, but are not limited to, travel costs, subcontractors, materials, computer costs, telephone, copies, delivery, etc. that are attributable to a project or Service. Travel costs are defined as air travel, lodging, meals and incidentals, ground transportation, tools, and all costs associated with travel. Horizon shall provide Customer substantiation of all costs. If Customer does not pay the fees or charges associated with this Service Agreement, Horizon may refuse to continue the services provided herein and may back charge the Customer for any labor or parts or any service whatsoever rendered in current good faith in anticipation of payment at the established rates. Customer agrees that such back charges may be added to a current service call on a C.O.D. basis. Customer also agrees that Horizon may, at its option, provide service only on a C.O.D. per call basis. Customer agrees to pay all taxes based on the service or other charges hereunder, including state and local taxes, and any taxes or amount in lieu thereof paid or payable by Horizon exclusive of taxes based on net income.

5. **Addition of Standard Software, or Custom Software**

Customer may request that Standard Software, and/or Custom Software other than those specified on the face of this agreement to be added to this Agreement. If Horizon agrees to any such addition, Customer agrees to pay the pro-rated charge for such addition, and any such addition shall be automatically renewed as provided in the Agreement.

6. **Maintenance Exclusions**

Maintenance service does not include repair of damage resulting from:

- (a) Any cause external to the Standard Software or Custom Software including, but not limited to, electrical work, fire, flood, water, wind, lightning and transportation, or any act of God;
- (b) Customer's failure to continually provide a suitable installation environment including, but not limited to, adequate electrical power; power must be provided by a dedicated line with a true earth ground. For safeguard against power surges and satisfactory product performance, product must have a surge suppressor. Voltage must range between 108-125 volts A/C. Potential between ground and neutral cannot exceed .5 volts A/C;
- (c) Customer's improper use, relocation, management or supervision of the Standard Software or Custom Software or other failure to use the Standard Software or Custom Software in accordance with Horizon specifications;

- (d) Customer's modification of the Standard Software and/or Custom Software without prior authorization from Horizon;
- (e) Customer's use of the Standard Software, or Custom Software for purposes other than those for which they are designed or the use of accessories or supplies not approved by Horizon;
- (f) Any software not listed on the face of this Agreement.

Any maintenance necessary as a result of Section A.6 (a) through (f) shall be a charge to Customer at the then applicable Horizon Time and Materials rate.

7. **Responsibilities of Customer**

Customer agrees: (a) to provide Horizon personnel with full, free and safe access to Standard Software and Custom Software for purposes of maintenance, including use of data communications facilities, if required; (b) to maintain and operate the Standard Software and Custom Software in an environment and according to procedures which conform to Horizon specifications; (c) not to allow maintenance or repair of the Standard Software or Custom Software by anyone other than Horizon without prior authorization from Horizon.

8. **Default**

Horizon reserves the right to terminate or suspend maintenance service in the event Customer is in default under this or any other Agreement with Horizon and such default is not corrected within thirty (30) business days after written notice. In addition, this Agreement will terminate and all charges due hereunder will become immediately due and payable in the event that Customer ceases to do business as a going concern or has its assets assigned by law.

9. **Warranty Exclusion**

THE PARTIES AGREE THAT ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED.

10. **Limitation of Liability**

Customer's sole remedy, and the sole liability of Horizon for any breach by Horizon shall be repeat performance of any repair, replacement, or maintenance required under this Agreement. IN NO EVENT WILL HORIZON BE LIABLE FOR (A) LOST PROFITS, LOST DATA OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR (B) DAMAGES CAUSED BY CUSTOMERS'S FAILURE TO PERFORM ITS RESPONSIBILITIES. Horizon agrees to be liable for personal injury caused solely by the negligence of its employees.

11. **General**

- (a) This Agreement shall be governed by Kentucky law.
- (b) The invalidity or illegality of any provision of this Agreement shall not affect the validity of any other provision. The parties intend for the remaining unaffected provisions to remain in full force and effect.
- (c) Neither party shall assign this Agreement without prior written consent of the other, and any purported assignment, without such consent, shall be void; provided however, that Horizon may assign this Agreement to its parent, affiliate or subsidiary without such written consent.
- (d) Neither party shall be liable for failures or delays in performance due to causes beyond its reasonable control, including war, strikes, lockouts, fire, flood, storm or other acts of God. Both parties agree to use their best efforts to minimize the effects of such failures or delays.
- (e) All notices which must be given under this Agreement shall be in writing and sent postage pre-paid, to the Horizon address on the front of the Agreement, or if to the Customer, to the billing address on the front of this Agreement.
- (f) This Agreement supersedes all prior or contemporaneous representations, negotiations, or other communications between the parties relating to the subject matter of this Agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties.
- (g) During and after the term of this Agreement, Customer shall not employ or utilize in any matter (outside Horizon) any employee of Horizon unless (i) such employee's employment by Horizon has been terminated for at least two (2) years; (ii) Horizon consents in writing.

**Section B. TERMS AND CONDITIONS APPLICABLE TO STANDARD SOFTWARE ONLY**

The following terms and conditions apply only to the Standard Software, if any, at the Customer's location(s). For the term of this Agreement, Horizon agrees to:

1. **Standard Software Maintenance** – (One year plan)

During the Normal Service Coverage Period, Horizon shall provide:

- (a) Remote diagnostic technical assistance through the Help Desk facility to resolve Standard Software functional problems and user problems;
- (b) Standard Software revisions, provided remotely through the Help Desk facility;

435 Napoleon Place, Johnstown, PA 15901

- (c) Standard Software version upgrades and enhancements, if within the same or a like operating system and employee capacity as the Software originally covered under this Agreement. Customer agrees to pay for labor charges required to install such version upgrades and enhancements at a 25% discount of Horizon established labor rates if customer requests on-site installation;
- (d) Additional in-house retraining at a 25% discount of Horizon established rates; such retraining will be held at Horizon.

## 2 Standard Software Exclusions

Any Standard Software maintenance beyond that described in Section B.1 (a) through (f) above shall be charged to the Customer at the then applicable Horizon Time and Materials rate.

In addition to the exclusions specified in Section A.6 of this Agreement, Standard Software maintenance excluded:

- (a) Services required for application programs and conversions from products or software not supplied by Horizon;
- (b) Service for Horizon Custom Software.

## **Section C. TERMS AND CONDITIONS APPLICABLE TO CUSTOM SOFTWARE ONLY**

The following terms and conditions apply only to the Custom Software, if any, at the Customer's location(s). For the term of this Agreement, Horizon agrees to:

- (a) Provide remote diagnostic technical assistance through the Help Desk facility to resolve Custom Software functional problems and user problems;
- (b) Retain, only for Horizon's own internal use, the source code for the Custom Software;
- (c) Give Customer a twenty-five percent (25%) discount on additional Custom Software services required because of changes in versions of Horizon Standard Software, which renders the Custom Software obsolete;
- (d) Provide additional in-house retraining at a 25% discount of Horizon established rates; such retraining will be held at Horizon.

Any documentation provided to Customer relating to the Custom Software is the confidential and proprietary information of Horizon and shall not be transferred, reproduced or disclosed to any third party without prior written consent of Horizon unless required to be disclosed by the Kentucky Open Records Act.

This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, modification or amendment of this Agreement shall be binding unless it is in writing and signed by both parties.



# HORIZON

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## END USER LICENSE AGREEMENT

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Whereas, Horizon Information Systems, Incorporated, hereinafter referred to as ("HORIZON") develops proprietary computer programs and sells user licenses for such proprietary computer programs together with or apart from accompanying copyrighted material and documentation, and

Whereas, End User desires to obtain the benefits thereof and, in return for which, is willing to abide by the obligations and fee agreements applicable to HORIZON's user licenses in HORIZON's proprietary computer programs.

NOW THEN, for good and valuable consideration, including but not limited to license grant in accordance with this Agreement by HORIZON to End User's covenant regarding HORIZON's proprietary rights. HORIZON agrees to sell End User materials representing HORIZON's product or products subject to the following terms and conditions:

### **Section D. TERMS AND CONDITIONS APPLICABLE TO END USER LICENSES.**

#### **1 EXCLUSIVE SOURCE**

End User shall obtain all HORIZON authorized product materials through HORIZON or HORIZON's authorized Dealer and no other source. HORIZON authorized product materials include, but are not limited to, manuals, license agreements and media upon which company's proprietary computer programs are recorded, except for archival copies, as defined in ARCHIVE COPIES. End User shall make no copies of any kind of any of the materials furnished by HORIZON or HORIZON's authorized Dealer, unless specifically authorized to do so in writing signed by an officer of HORIZON.

#### **2. PROPRIETARY RIGHTS OF HORIZON**

End User agrees that HORIZON retains exclusive ownership of the trademarks represented by its company name and logo and product names including but not limited to Horizon Software and Stratus, and all of the documentation and computer recorded data related thereto. End User also agrees that all techniques, algorithms, and processes contained in HORIZON's computer program products or any modification or extraction thereof constitute TRADE SECRETS OF HORIZON and will be safeguarded by End User, but in no event shall End User exercise less than due diligence and care in accordance with the laws of the country of purchase and



International Law, whichever operates to best protect the interests of HORIZON. End User shall not copy, reproduce, re-manufacture or in any way duplicate all or any part of HORIZON products WHETHER MODIFIED OR TRANSLATED INTO ANOTHER LANGUAGE OR NOT, or in any documentation, or in any other material provided by HORIZON in association with HORIZON's computer program products except as specified in this Agreement and in accordance with the terms and conditions of this Agreement which remain in force. End User agrees that unauthorized distributing, copying, duplications, or otherwise reproducing ALL OR ANY PART OR TRANSLATED PART of the computer program products provided by HORIZON or the failure to protect such computer programs will actually and materially damage HORIZON. End User agrees that in the event End User breaches this agreement, End User will be liable for damages as may be determined by a court of competent jurisdiction.

3. **ARCHIVE COPIES**

End User may make archival copies of those portions of HORIZON's product(s) that are provided on a machine readable media, provided such copies are for the End User's personal use on one microcomputer and that no more than one such copy is used at any time unless End User has paid for multiple copy use as described in SINGLE CPU of this Agreement.

4. **SINGLE CPU**

HORIZON user licenses are applicable to a single microcomputer installation in the event End User intends to use a HORIZON product or any part thereof on more than one microcomputer; the license fee for each such multiple user must be purchased. In the event of simultaneous use, a license must be obtained for each instance of possible simultaneous execution.

5. **ASSIGNMENT**

In the event End User wishes to transfer the rights granted by this Agreement, retaining none thereby, a letter requesting such transfer accompanied by the original diskette or label therefrom, must be sent to HORIZON. HORIZON will then select the most appropriate method for distribution of the transferred rights.

6. **LIMITED WARRANTY**

HORIZON warrants that all materials furnished by HORIZON constitute an accurate manufacture of HORIZON products and will replace any such HORIZON furnished material to be thus defective, provided such defect is found within ten days of purchase by End User. However, HORIZON makes NO express or implied warranty of any kind with regard to performance or accuracy of data of any kind nor for any consequential damages resulting therefrom whether through loss or inaccuracy of data of any kind nor for any consequential damages resulting therefrom whether through HORIZON negligence or not. HORIZON will not honor any warranty where a HORIZON product has been subjected to physical abuse or used in defective or non-

compatible equipment. HORIZON will not honor any warranty for which there is no signed End User Agreement Acknowledgment on file at HORIZON offices. The products provided are intended for commercial use only.

7. **UPDATES**

HORIZON may, from time to time, revise the performance of its products and in doing so; incur NO obligation to furnish such revisions to any HORIZON customer unless otherwise specified in a Software Maintenance Agreement purchased by End User. At HORIZON's option, HORIZON may provide its End Users with a revision newsletter from time to time. (No update or customer service or newsletter distribution will be provided unless a properly signed End User Agreement Acknowledgment is on file at HORIZON offices.)

8. **CUSTOMER SUPPORT**

It is HORIZON's customary practice to offer purchase of a Software Maintenance Agreement to its customers to provide reasonable assistance and support in the use of HORIZON's products.

9. **TERMINATION OF LICENSE**

If any one or more of the provisions of this Agreement is breached, the license granted by this Agreement is hereby terminated. Nevertheless, in the event of such termination, all the provisions of this Agreement, which operate to protect the rights of HORIZON, shall continue in force.

10. **INJUNCTIVE RELIEF**

It is understood and agreed that, notwithstanding any other provisions of this Agreement, HORIZON has the unequivocal right to obtain timely injunctive relief to protect the proprietary rights of HORIZON.

11. **GOVERNING LAW**

When signed in the United States, this Agreement shall be interpreted in accordance with the laws of the State of Kentucky. When signed in any other country, this agreement will be interpreted in accordance with International Law. In the event any part of this Agreement is invalidated by court or legislative action of competent jurisdiction, the remainder of this Agreement shall remain in binding effect.

**ACKNOWLEDGEMENT**

**Horizon Software Maintenance Agreement**

The undersigned hereby agrees that by signing this document, he or she becomes a party to said Software Maintenance Agreement and agrees to be bound by all terms, conditions, and obligations contained therein.

Agreed and Accepted by:

Customer:

\_\_\_\_\_  
Acceptance by  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

Horizon Information Systems, Inc.  
Robert J. Swetz Acceptance by  
\_\_\_\_\_  
Signature  
Dir of Customer Svc Title  
December 12, 2016 Date

I hereby waive the offer to purchase the Horizon Software Maintenance Agreement for the Horizon Standard Software and/or Horizon Custom Software specified on the front of this agreement.

Customer:

\_\_\_\_\_  
Waived by  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

**Horizon End User License Agreement**

The undersigned hereby agrees that by signing this document, he or she becomes a party to said End User License Agreement and agrees to be bound by all terms, conditions, and obligations contained therein. End User recognizes that any use of Horizon products without the return of signed End User License Agreement will be considered a breach of contract, subject to liquidated damages and otherwise unlawful and an unauthorized use of Horizon's trade secrets and proprietary products.

Agreed and Accepted by:

Customer:

\_\_\_\_\_  
Acceptance by  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

Horizon Information Systems, Inc.  
Robert J. Swetz Acceptance by  
\_\_\_\_\_  
Signature  
Dir of Customer Svc Title  
December 12, 2016 Date

The Horizon End User License Agreement cannot be waived.