

**SUMTER COUNTY BOARD OF COMMISSIONERS  
EXECUTIVE SUMMARY**

**SUBJECT:** Renewal of BeneWise License Agreement with Infinity Software Solutions, Inc (Staff recommends approval).

**REQUESTED ACTION:** Approval and signing of License Agreement Renewal

Work Session (Report Only)    **DATE OF MEETING:** 10/25/2011  
 Regular Meeting                       Special Meeting

**CONTRACT:**  N/A

Vendor/Entity: Infinity Software Solutions, Inc.

Effective Date:  
October 1, 2011

Termination Date:  
September 30, 2013

Managing Division / Dept: Financial Services

**BUDGET IMPACT:** \$36,890 (Budgeted Item)

Annual  
 Capital  
 N/A

**FUNDING SOURCE:** Group Health Plan

**EXPENDITURE ACCOUNT:** 501-590-591-3400

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**HISTORY/FACTS/ISSUES:**

BeneWise is the secure web-based resource management system developed by Infinity Software Solutions, Inc. (Infinity) that presently provides automation for on-line benefit enrollments, internal and external billing, and tracking and reporting of employee benefits.

The cost is \$3.00 per active employee (including retirees and COBRA participants) per. The initial term is 24 months with an additional one year automatic renewal.

Staff recommends renewal of this contract (see attached) at a cost of \$3.00 per month, per active employee (including OPS, Retirees, and Cobra participants) for an annual estimated cost of \$36,890.

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## INFINITYHR “PREMIUM” VERSION LICENSE AGREEMENT

This **License Agreement**, ("License Agreement") as dated below, by and between **Infinity Software Solutions, Inc.**, ("LICENSOR") an Arizona corporation and LICENSEE (Sumter County Board of County Commissioners) ("LICENSEE"), establishes a license for LICENSEE to use LICENSOR'S product, the InfinityHR "Premium" Version ("Product"). LICENSOR hereby grants to LICENSEE a nonexclusive, nontransferable, limited license to use the Product for a term of twenty-four (24) months ("License Period") from the date of this License Agreement.

### TERM

The initial term of this Agreement is twenty-four (24) months from the date of this License Agreement. This License Agreement will automatically be extended for additional terms of 12 months each unless LICENSEE or LICENSOR gives the other party at least 30 days written e-mail notice of termination prior to the Anniversary date of the License Agreement, excluding the first Anniversary of the License Agreement. If providing notice to LICENSOR, Electronic Written notice must be provided through Electronic Mail (Email) and should be addressed to [sales@infinity-ss.com](mailto:sales@infinity-ss.com) with the words "account cancellation" in the subject line.

### PARTICIPANT

"Participant" means those employees of LICENSEE loaded into the system that meet the following requirements: 1) Any employee currently (current as of the date of billing) enrolled in one or more benefits configured within the system, 2) Any employee not currently enrolled in one or more benefits, but with an "Active" account in the system (i.e. able to access the Employee Portal), 3) Any employee not currently enrolled in one or more benefits, but that has accessed the system in the last 30 days or 4) Any employee record that has been updated, whether by an employee or administrator in the last 30 days.

### BILLING / PRICING

Charges will be applied on the 15<sup>th</sup> of each month and be for one month in advance plus any usage of the Product before the 15<sup>th</sup> of the initial month's usage. LICENSEE shall be charged a per-employee-per-month fee attached hereto as Attachment A. LICENSEE may also be charged an Implementation Fee attached hereto as Attachment A. The scope of Implementation shall be inclusive of the services attached hereto as Attachment B. The Implementation Fee shall be due immediately upon signing of this Agreement. The initial billing shall commence either after the completion of the initial Product training or 60 days following the signing of this Agreement, whichever comes first. LICENSEE will be provided at least 30 days notice of any future price increase.

### LATE FEES

If LICENSEE does not remit payment on a timely basis, LICENSOR may charge a late fee of \$100 per month plus 5% of any amounts due on a monthly basis. Waiver of these fees are at the sole and absolute discretion of LICENSOR. Any past waivers, whether express or through practice, shall not inhibit the LICENSOR's right to charge late fees in the event a payment is delinquent.

### DATA DISTRIBUTION SETUP

The standard Implementation will include the development, testing, and Implementation of up to 6 external interfaces (i.e. carriers, payroll, etc....). Any additional Payroll or Carrier interfaces are provided at a one-time Fee attached hereto as Attachment A. Due to the flexibility of the Product, any changes required for these interfaces following the initial interface are normally performed by LICENSEE. If LICENSOR is requested to assist in performing interface changes, beyond the initial interfaces, the time required to perform such service will be charged at the then current consulting fee per hour. Due to varying degrees of responsiveness by third parties, the Data Distribution Setup shall not be considered a determining factor in the commencement of the initial training and/or billing. Further, while LICENSOR will assist the LICENSEE in engaging third parties for system integrations, successful third party integrations are not the ultimate responsibility of the LICENSOR and are dependent on sufficient cooperation by the LICENSEE and third parties. While LICENSOR will support LICENSEE and third parties in implementation and change efforts, implementation and change results are impacted by LICENSEE and third parties, therefore LICENSOR does not take sole responsibility for such efforts.

## **SYSTEM DOCUMENTATION / SUPPORT**

Both on-line "Help" and User Guides for the Product are available for LICENSEE. Customer Support is also available through the Product and by e-mail directly to LICENSEE'S assigned Customer Support Representative.

## **CERTIFICATE OF INSURANCE (COI)**

LICENSOR shall maintain insurance coverage consistent with Schedule COI for the term of this Agreement and any extensions thereto.

## **WARRANTIES AND LIMITATIONS OF LIABILITY**

The Product is provided to LICENSEE on a strictly **AS IS** basis, and LICENSOR and its suppliers make no warranties, expressed or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, relating to the Product during the License Period. Further, LICENSEE understands and agrees that LICENSOR and its vendors will have absolutely no liability of any kind for any loss, costs or damages resulting from LICENSOR'S use of the Product during this License Period or thereafter.

## **COMPLAINTS FOR NON-PERFORMANCE TO BE IN WRITING, LICENSOR HAS OPPORTUNITY TO CURE**

Any complaints for Non-Performance of any kind on the part of LICENSOR must be made through Electronic Written notice provided through Electronic Mail (Email) and should be addressed to [sales@infinity-ss.com](mailto:sales@infinity-ss.com) with the words "complaint for non-performance" in the subject line. Reasonable complaints shall be dealt with promptly with responses sent in writing within thirty (30) days. LICENSOR reserves the right, in its sole and absolute discretion, to determine whether a complaint is reasonable or whether it is outside of the scope of this or other Agreements.

## **PROPRIETARY RIGHTS AND PROVISIONS**

The Product contains Confidential Information proprietary to LICENSOR. "Confidential Information" means information including, but not limited to, the program structure, logic, data structures, design, processes, procedures, formula and algorithms contained in the ordered set of instructions, which together constitute the Product, any documentation (excluding manuals or information that are publicly available but including this Agreement), and any other information marked as Confidential or Proprietary.

LICENSEE shall use the Product only for the purposes set forth herein. Title to and ownership of the Product and all portions thereof and all applicable rights in patents, copyrights and trade secrets in the Product shall remain exclusively with LICENSOR. The License Agreement does not constitute a sale of LICENSOR'S proprietary data and computer programs provided to LICENSEE.

LICENSEE shall use reasonable care to prevent unauthorized disclosure, use, reproduction, or distribution of the Product. Except as set forth herein or as may be permitted in writing by LICENSOR, LICENSEE shall not provide or otherwise make available the Product or any part or copies thereof to any third party. LICENSEE shall not seek to discover any LICENSOR Confidential Information by reverse engineering, decompiling, or disassembling the Product, or any portion thereof, nor otherwise attempt to create access or derive the source code.

LICENSEE shall not alter or delete any copyright or trademark notice, trade name, or other markings, which identify LICENSOR'S proprietary rights and interests.

This License Agreement is subject to all US laws and regulations relating to exports and to all administrative acts of the US Government pursuant to such laws and regulations. Export, re-export or transshipment of the Product or any other technical data licensed under this License Agreement, or the derivative products thereof, is contingent upon prior written authorization from LICENSOR and compliance with all necessary US Government approvals and License licenses.

## **CONFIDENTIALITY AND LIMITATION OF USE**

LICENSEE agrees to receive the Product, any other materials made available to LICENSEE or confidential information disclosed to LICENSEE hereunder, and to hold it in confidence and not disclose it in any manner to any person, firm or entity, except to employees of LICENSEE with a need to know. LICENSEE will not transfer, sell, modify, create derivative works, translate, reverse engineer, reverse compile or decompile the Product, in whole or in part, nor will it create or attempt to create, the source code version of the Product by reverse

engineering or disassembling of the design, algorithms or other proprietary trade secrets, or using any other methods. LICENSEE's obligation of confidentiality hereunder will survive the expiration of the License Period. LICENSEE will use the Product, and any such materials and information delivered or disclosed to it hereunder only internally within its own company and will not use the Product in any other way other than its intended purpose. LICENSEE agrees to comply fully with HIPAA regulations as a "Business Associate" as set forth in the Business Associate Agreement maintained at [www.Infinity-SS.com](http://www.Infinity-SS.com),

#### **TERMINATION**

Upon termination of this License Agreement and receipt by LICENSOR of payment for all amounts due it hereunder, LICENSOR may make available (upon written request by LICENSEE) to LICENSEE all pertinent data, reports, and files, ownership of which shall remain at all times with LICENSEE provided, however, that nothing herein shall be construed to require LICENSOR to give to LICENSEE and/or LICENSEE'S clients any proprietary software belonging to LICENSOR which was used by LICENSEE in the provisions of Administrative Services. Preparation and delivery of such data, reports, and files may be additional services. Therefore, the time required to provide such services may be charged to LICENSEE at LICENSOR'S then current consulting fee per hour.

#### **EXCLUSIONS OF OTHER REMEDIES**

IN NO EVENT WILL LICENSOR BE LIABLE FOR INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, ECONOMIC COVER OR CONSEQUENTIAL OR SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES RELATING TO LOSS OF PROFITS, GOODWILL, OR DATA), WITHOUT REGARD TO THE LEGAL THEORY OF SUCH DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATED TO THE ADMINISTRATIVE SERVICES. IN NO CASE SHALL LICENSOR'S LIABILITY FOR ACTUAL DAMAGES UNDER THIS AGREEMENT EXCEED THE ONGOING FEES (WHICH SHALL NOT BE DEEMED TO INCLUDE ANY SETUP FEES) PAID UNDER THIS AGREEMENT DURING THE TWO WEEK PERIOD PRIOR TO THE MONTH GIVING RISE TO SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT LICENSOR HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DISCLAIMER OF WARRANTIES, AND DAMAGES SET FORTH IN THIS AGREEMENT AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

#### **INDEPENDENT CONTRACTOR; SERVICE PROVIDER**

Nothing in this agreement is intended or shall be construed to give LICENSOR discretionary authority or discretionary responsibility in the administration of the LICENSEE'S Benefit Plan(s). The relationship of LICENSOR (or any of its officers, directors, or employees) to LICENSEE (or any of its officers, directors, or employees) is intended to be only that of an independent contractor and service provider and not a joint venture partnership, trust, fiduciary, or other similar relationship.

#### **GENERAL**

This License Agreement sets forth the entire understanding between the parties with respect to the matters set forth herein and supersedes all prior representations, understandings, or agreements, whether written or oral, express or implied, with respect to this License Agreement.

This License Agreement is governed by the laws of the State of Arizona, U.S.A., other than those provisions of Arizona law governing conflicting of laws. Should any provision of this License Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effective and shall in no way be affected, impaired, or invalidated.

Should LICENSOR waive or otherwise refrain from enforcing any of its rights under this Agreement, that action or inaction, shall in no way limit LICENSOR's ability to enforce any and all rights under the contract.

**EFFECTIVE AGREEMENT**

The LICENSEE acknowledges reading this License Agreement and agrees that it is the complete and exclusive statement of the agreement between the parties, and supersedes all prior proposals and understandings, oral or written, relating to the subject matter of this License Agreement.

**ACCEPTED:**

**LICENSEE:**

Sumter County Board of County Commissioners

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Company

Don Burgess

-----  
Printed Name

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Signature

Chairman

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Title

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Date

**LICENSOR:**

Infinity Software Solutions, Inc.

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Company

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Printed Name

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Signature

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Title

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Date

Attachment A

Option 1: (Full HRIS) Per-Employee-Per-Month (PEPM) Fee: \$3.50 (U.S. Dollars)

Option 2: (Benefits Only—existing use) Per-Employee-Per-Month (PEPM) Fee: \$3.00

Implementation Fee\*: None.(U.S. Dollars)

Additional Data Distribution Setup Fee: \$750 (U.S. Dollars)

The minimum charge per month shall be \$400 per month (even if PEPM rate multiplied by the number of employees equals less than \$400).

\*As part of the Implementation/Setup process LICENSOR will also prepare a Product Implementation Schedule for LICENSEE. The start and completion dates for the Product Implementation, as well as definitions of tasks and responsibilities, will also be described within this Schedule. LICENSOR will provide LICENSEE with Implementation Templates. The Implementation Fee is predicated on the LICENSEE completing those templates in a manner that enables LICENSOR to import data directly into the system. If the LICENSEE does not complete the templates and requires the LICENSOR to complete the implementation through multiple data sources, the Implementation Fee shall increase by \$2,000 (Implementation Fee Increase) and shall be due and payable by LICENSEE on the date that LICENSEE receives access to the system. Upon mutual agreement by LICENSOR and LICENSEE, LICENSEE may elect to pay the Implementation Fee Increase by increasing the PEPM fee by \$0.35 for the duration of the Agreement.

**Product Training**

Licensor will provide LICENSEE with a total of eight (8) hours of Product training comprised of (4) four hours of initial Product training and an additional (4) four hours of follow up training within 60 days of implementation. This training may be performed either on-line or at LICENSEE's location. Initial Product training (excluding travel) is included in the Implementation Fee. Any travel or living expenses required by LICENSOR to perform Product training will be pre-approved by and paid for by LICENSEE. Product training will be invoiced prior to the start date of training and will be due within 30 days of date of invoice.

Attachment B

**Implementation Scope of Services**

The scope of the Implementation activities provided by LICENSOR shall be defined by the table below. LICENSOR shall allocate resources to complete the activities identified up to the amount of hours specified per activity. In general the activities and time frames defined below represent a sufficient amount of support and hours to successfully implement the Product.

Should LICENSEE request additional activities within any of the categories noted below to be performed by LICENSOR during the implementation or for LICENSOR resources to spend more than the allocated amount of time defined on any activity identified below, LICENSOR shall reserve the right to charge a fee of \$80 per hour for those activities and/or additional hours of time.

LICENSOR shall notify LICENSEE if and when the amount of hours spent on Implementation Services reaches 85% of the allocated total in a given category so as to provide LICENSEE with sufficient notice of available hours remaining. LICENSEE may request additional hours at any time from the LICENSOR. Charges for additional services will be included on the next invoice per LICENSOR's normal Billing cycle.

LICENSOR shall request an acknowledgement via electronic email from LICENSEE regarding the completion of the Implementation Phase once all Implementation services have been completed. The acknowledgement by LICENSEE shall also serve as acknowledgement that LICENSEE has performed testing of the Implementation of the Product and that the Product was implemented satisfactorily. LICENSEE must acknowledge the completion of the Implementation before any live data distribution interfaces (to carriers, payroll, etc...) shall be executed through the Product. If the LICENSEE receives such a request from the LICENSOR and does not respond within 7 calendar days, then such non-response shall be deemed to be an acknowledgement of completion and LICENSOR shall not be obligated to perform further work within the scope of the initial implementation (though additional hours may be available at the billable rate).

<b>Implementation Activity</b>	<b>Estimated Hours per Category</b>	<b>Maximum Hours per Category*</b>
Kickoff Meeting	2	2
Data Imports (employee, dependent, compensation, etc....)	6	6
Benefit Structure Configuration and Eligibility Rules	4	8
Configuration of HR Components (Time Off, Time & Attendance, etc....)	6	10
Configuration of New Hire and Open Enrollment Events	1	2
System Testing	10	16
Administration Training	4	8
Post Training Configuration / Changes	4	8
Third Party Export Configurations	16	24
General Account Management Activities / Meetings	8	12

\*LICENSOR will notify LICENSEE when 85% of the maximum hours in a given category have been spent. LICENSOR will also identify information needed from LICENSEE and remaining hours estimated. LICENSEE shall only be billed if the 85% notice was provided and for actual hours spent in a given category in excess of the Maximum Hours per Category.

## CONFIGURATION AND CUSTOMIZATION

### Definitions:

**Configuration:** *The way in which the Product is set-up using the tools available within the current version of the Product in order to meet user needs.*

**Customization:** *To modify and/or enhance the Product beyond its current capabilities to the unique specifications of the user.*

### Configuration

The Product provides a considerable amount of configuration options to support varying needs. During the beginning stages of the implementation process, LICENSEE is responsible for communicating configuration preferences to LICENSOR. These configuration preferences will be incorporated into the installation. Thereafter, LICENSEE may modify its configuration preferences on its own or ask LICENSOR to make subsequent configuration changes.

Examples of “configurations” include:

- Establishing Administrators with unique permissions,
- Inputting specific employee benefit configurations,
- Generating carrier/payroll export and import files (Premium Version, not Professional Version),
- Turning on or off any module, and
- Setting up the Product to reflect any other preference available in the existing version of the Product.

### Customization

Customization requests must be communicated from LICENSEE to LICENSOR in a Statement of Work (SOW). Upon receiving the SOW, the InfinityHR development team will provide an estimated completion date and update the client until the SOW is completed. Thereafter, customization may be requested through new SOWs and priced based on InfinityHR’s development billing rate (currently \$100 per hour).

Examples of “customizations” include:

- Changing the look/feel of certain modules (e.g., specific time/attendance look/feel),
- Building a new report that is not an existing one-click/standard report, and
- Programming the Product to reflect any other preference that is not available in the existing Product.