



Issue Paper

DATE:

November 1, 2021

AGENDA ITEM (ACTION ITEM):

Consider/Approve Nutrislice software Subscription Agreement from December 1, 2021 through November 30, 2022.

APPLICABLE BOARD POLICY:

Legal Status of the Board 01.1

HISTORY/BACKGROUND:

Nutrislice is an online platform to deliver menus to students and parents. Kenton County families will have access to menus, nutrition information, and allergens through the website or the smartphone application.

FISCAL/BUDGETARY IMPACT:

\$4,452.00 paid by Student Nutrition for the annual subscription.

RECOMMENDATION:


Approval to renew the contract terms with Nutrislice.

CONTACT PERSON:

Elizabeth Hord


Principal/Administrator


District Administrator


Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

Nutrislice Software Subscription Agreement

Version 3.2

Last updated February 4, 2020

This Software Subscription Agreement (this "**Agreement**") governs your acquisition and use of software services from Nutrislice, Inc., a Delaware corporation ("**Nutrislice**") headquartered in Broomfield, Colorado.

By entering into an Order Contract (as defined below) with Nutrislice, You agree to the terms and conditions herein as if they were incorporated directly into such Order Contract.

If you are entering into this Agreement, or an Order Contract which references it, on behalf of a company, institution, government organization, or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the words "**Client**", "**You**" or "**Your**" shall refer to such entity, and you hereby enter into this Agreement on such entity's behalf; however, if you do not have the authority to bind such entity to this Agreement or if you do not agree with the terms and conditions herein, you must not accept any Order Contract referencing this Agreement and may not use the Software.

1. DEFINITIONS. In addition to other terms defined in Title Case throughout this Agreement, usage in Title Case of the terms defined in this section shall have the following meanings:

- 1.1 "Add-on Contract"** means any sales order, order form, addenda, amendment or other agreement that specifically references a previous or concurrent Order Contract and provides for additional purchases beyond those made in such Order Contract. For purposes of this Agreement, except where clear reference is made to an *initial* Order Contract or distinction is made for Add-on Contracts, all references to "Order Contract" and terms and conditions applicable to purchases made under an Order Contract and shall also apply to purchases made under an Add-on Contract.
- 1.2 "Authorized User(s)"** means individuals who are authorized by You to use the Software Services. Authorized Users may include but are not limited to, as applicable, You, Your employees, consultants, contractors, agents, students (including minors), and/or other third parties who You have authorized to access and/or use the Software.
- 1.3 "End User(s)"** means individuals who consume or interact with information or interfaces made available via the Software Services, including Authorized User(s), third parties with whom You transact business, and persons from the general public who engage with Your business or program information via the Software, regardless of whether they constitute your primary or intended audience or customers.
- 1.4 "Order Contract"** means a sales order, order form, purchase contract, purchase order, or other contractual agreement within which this Agreement is attached or referenced, including referenced by URL, which conveys an agreement between the Parties for the purchase of one or more Subscriptions and/or other associated services and/or products from Nutrislice. The parties agree that an Order Contract that binds the parties to this Agreement may be formed either by execution of a contractual document, or by acceptance of an offer, quote or proposal from Nutrislice that incorporates or references this Agreement. The term "Order Contract" shall collectively incorporate any subsequent addenda, renewals, amendments, or Add-on Contracts referencing an Order Contract.
- 1.5 "Parties"** shall mean both You and Nutrislice. "**Party**" shall mean either You or Nutrislice, according to the context of its usage.
- 1.6 "Personal Data"** means any information that is considered to "personally-identifiable," "personal data," or information that may be used to identify an individual or is confidential to an individual, as defined in each context herein by the Privacy Law(s) applicable to such information, including without limitation name, birth date, address, username/password, etc.
- 1.7 "Privacy Laws"** means all data protection and privacy laws to the extent applicable to the collection, use, storage, or disclosure, or processing of the Personal Data hereunder, including but not be limited to:
 - a) all United States Federal Trade Commission ("**FTC**") rules, regulations and guidance relating to the collection, use, disclosure and processing of Personal Data;
 - b) the Children's Online Privacy Protection Act of 1998 ("**COPPA**"), including any regulations and guidance issued thereunder;

- c) The Family Education Rights and Privacy Act ("**FERPA**"), including any relevant regulations, and guidance issued thereunder, as well as any other federal laws, state laws, rules and regulations relating to the protection of Personal Data of students; and
 - d) The California Consumer Privacy Act ("**CCPA**") to the extent applicable to any Subscriptions purchased by Client or applicable use anticipated hereunder; and
 - e) The Payment Card Industry Data Security Standard v3.2 or any successor standard thereto which has been in effect for at least 1 year ("**PCI-DSS**");
- 1.8 "Services"** means any services specified in the Order Contract as well as any services that are included with any Software Services specified in the Order Contract, including without limitation, services related to hardware installation, hosting, system and general updates, client support, and maintenance.
- 1.9 "Software Services" or "Software"** means any software application (including web-based software) that is created and/or operated by Nutrislice. Software Services specifically refers to Software, provided by Nutrislice as a subscription-based service.
- 1.10 "Subscription"** means a grant from Nutrislice of non-exclusive, non-transferable, non-sublicensable, limited rights for You and Your employees and Authorized Users to access and/or use the Software or Services specified in an Order Contract or Add-on Contract, for the term thereof.
- 1.11 "User Data"** means all electronic data or information submitted by You or Authorized Users of the Software Services and any data derived directly therefrom by any of the Software, which is not Personal Data.

2. GENERAL

- 2.1 Nutrislice's Responsibilities and Service Level Commitments.** Subject to the terms of this Agreement and the applicable Order Contract, Nutrislice shall take the following actions with the following levels of commitment and service (the "**Service Level Commitments**"): (a) provide You with access to Software Services that perform the functions and/or Services described in any Order Contract and documentation; (b) provide standard email and phone support for the Software Services to You during at least standard business hours of 7:00 AM - 4:00 PM, MT, and any additional or upgraded support and consultations as specified in an Order Contract; (c) provide the Services and Software Services only in accordance with applicable laws and government regulations, including Privacy Laws; and (d) use commercially reasonable efforts to make Subscribed-to Software Services available with at least 99% availability, 24 hours a day, 7 days a week, except for: (i) planned downtime, which Nutrislice shall minimize and limit to low traffic times; (ii) temporary outages caused by unforeseen technological issues of Nutrislice's hosting platform(s) or a third-party technological dependency, which Nutrislice shall use commercially reasonable efforts to expedite resolution given that continual uptime is in Nutrislice's own interest; or (iii) any unavailability caused by circumstances beyond Nutrislice's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Nutrislice's employees), Internet service provider failures or delays, or denial of service attacks.

2.2 Your Responsibilities.

- 2.2.1** You shall (i) be responsible for Your and Authorized Users' compliance with this Agreement; (ii) be responsible for the accuracy, quality and legality of any Client Data provided by You or Your Authorized Users; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Nutrislice promptly of any such unauthorized access or use; (iv) use the Software Services only in accordance with applicable laws and government regulations; (v) if the Software Services are provided to minors or minors are the intended audience of the output of the Software, assure that any federal, state, or local (including school) regulations, guidelines, or laws are followed with respect to Your particular use of the Software Services with minors; and (vi) to cooperate with Nutrislice and Nutrislice's licensors (if any) in connection with efforts to protect intellectual property and other legal rights in the Software.
- 2.2.2** You shall not use access to the Software or provide access thereto to any third party for any of the following: (i) to make secured areas (those for which a password, or other credential is required) of the Software available to anyone other than Authorized Users; (ii) to sell, resell, rent or lease the Software Services; (iii) to store or transmit obscene, pornographic, libelous, unlawful, or tortious material, or material in violation of third-party privacy or intellectual property rights; (iv) to use the Software to store or transmit any harmful, exploitative, or malicious code or program; (v) to interfere with, access without authorization, or disrupt the integrity or performance of the Software, data contained therein, or any third-party dependencies; (vi) to reverse engineer the Software; (vii) to create any competing product or service or product with similar features to the Software or to provide access to the Software or information about the Software or derived

from the Software with any Nutrislice competitor; (viii) to create any application, web site or program code incorporating any interfaces, API's or URL's exposed by the Software without written authorization from Nutrislice; (ix) to copy, frame or mirror any graphics, code, content or portion of the Software without written authorization from Nutrislice; (x) to disseminate performance information or analysis from any source relating to the Software; (xi) to remove any product identification, copyright notice or other proprietary marking from the Software; or (xiii) in violation of the terms of service or acceptable uses permitted by the provider of any system (software or hardware) with which You or Your Authorized Users utilize the Software.

2.3 Subscriptions. For the duration of each fully paid Subscription, Nutrislice will provide access to Software and Services as specified in an Order Contract. Each Subscription is limited to the Software, Services, and modules/levels (as applicable) specified in the Order Contract, and include all standard features, improvements and changes applicable to the Subscription for the duration thereof. Additional Software, Services, or Subscriptions can be purchased in an Add-On Contract, and the Subscription costs and terms for Add-on Contract purchases will generally be prorated to co-terminate and co-renew with the Order Contract, unless otherwise specified. Each Subscription shall have a term which is coterminous with the Order Contract under which it is purchased, unless otherwise agreed to therein.

2.4 Update, Customizations and modifications. You acknowledge that updates and changes to the Software will be provided as part of your Subscription(s) at Nutrislice's discretion, and agree that Nutrislice may change, update or remove features or functions of the Software, so long as the core Software functionality corresponding to your purchased Subscription(s) are not impeded. To the extent that You request or require customizations or modifications to the Software, Nutrislice only agrees to such customizations or modifications if they are explicitly reflected in your Order Contract. You recognize that any outstanding or future requests for customizations not reflected in an Order Contract will only be considered at Nutrislice's sole discretion and may require an additional charge and an Add-on Contract or Addendum agreed to by both Parties.

2.5 Usage Limitations. Purchased Subscription(s) are typically subject to limitations, such as to one or more specifically named, or a certain number of, organization(s), campuses, locations, sites, or screens in/with which the Software may be used or displayed, or other limitations, as indicated in one or more Order Contract(s) or Add-on Contract(s). You agree not to use the Software beyond such limits or for the benefit or use of any organization(s) other than the Client named in an Order Contract, except with an additional written agreement from Nutrislice authorizing such additional use. Nutrislice may periodically review Your use of the Software to determine your compliance with such limits and the terms of this Agreement, and may, at Nutrislice's reasonable discretion, verify such compliance by requesting self-certification(s), conducting on-site audits, and/or requesting audits by a third-party auditor at Nutrislice's expense. Any such audits will be only be performed upon reasonable notice and during normal business hours, not more often than once in any twelve (12) month period unless a material discrepancy was identified during the course of a prior review by Nutrislice. In the event that You have exceeded the limitations or uses allowed by a purchased Subscription, you shall be required to pay in arrears for the value of such additional use at the most recent pricing provided to You by Nutrislice for similar services, or at Nutrislice's standard pricing for such services, if no such pricing had been previously agreed upon. If any use of the Software by Client in excess of limits or purchased Subscriptions is determined to be deliberate, or is in violation of the terms of this agreement, Nutrislice may terminate the agreement for cause and/or recover all available damages.

3. FEES AND PAYMENT

3.1 Fees. You shall pay all fees that are specified in all Order Contracts and Add-On Contracts, on time. Except as otherwise specified herein or in an Order Contract, (a) fees are based on Subscriptions purchased and not actual usage, (b) purchase commitments and payment obligations are non-cancelable, (c) fees paid are non-refundable, and (d) Subscriptions cannot be canceled or reduced during the relevant Order Contract term for refund or credit.

3.2 Invoicing and Payment. All charges for the Software Services shall be made according to the terms of the Order Contract. Unless otherwise stated in the Order Contract, invoiced charges are due 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Nutrislice and notifying Nutrislice of any changes to such information. For placing orders of Nutrislice products or services, Nutrislice may require you to submit the details of an order using a specific form, document, or website for it to be accepted.

3.3 Overdue Charges. If any invoiced amount is not received by Nutrislice by the due date, then at Nutrislice's discretion, (a) such charges 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; and/or (b) Nutrislice may condition future Subscription renewals and Order Contracts on payment terms shorter than those specified in Section 3.2.

- 3.4 Suspension of Service.** If any amount owed by You to Nutrislice under this or any other agreement for Software Services is thirty (30) or more days overdue, or if You violate any of Your material obligations under this Agreement, Nutrislice may, without limiting Nutrislice's other rights and remedies, suspend Software Services to You until such amounts are paid in full or the violation is remedied. Nutrislice will provide at least fifteen (15) days' notice prior to suspension due to overdue payment or violation of contractual obligations; notwithstanding, Nutrislice may suspend Software Services immediately in lieu of termination, at its sole discretion, for any breach of contract that would otherwise warrant immediate termination for cause under Section 9.3, and may provide conditions for re-enablement of service or subsequently terminate.
- 3.5 Taxes.** Unless otherwise stated, Nutrislice's 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**"). You are responsible for paying all such Taxes associated with Your purchases hereunder, not including any tax premised on Nutrislice's net income. If Nutrislice has the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Nutrislice with a valid tax exemption certificate authorized by the appropriate taxing authority.

4. PROPRIETARY RIGHTS

- 4.1 Reservation of Rights in Software.** Subject to the limited rights expressly granted hereunder, Nutrislice reserves all rights, title and interest in and to the Software, including all related intellectual property rights. No rights are granted to You hereunder other than limited usage rights for a limited time, as expressly set forth herein and/or in any Order Contract.
- 4.2 Reservation of Rights to Content.** Subject to the limited rights expressly granted hereunder, Nutrislice reserves all rights, title and interest in and to any content owned or licensed by Nutrislice that is provided with the Software Services, including any images, text, video, and other content or files. No rights to Content are granted to You hereunder other than limited usage rights of the content within the Software for the duration of corresponding active Subscription(s).
- 4.3 Suggestions.** To the extent applicable and possible, You hereby grant Nutrislice a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Software any suggestions, enhancement requests, recommendations or other feedback provided by You, Authorized Users, or End Users.

5. CONFIDENTIALITY

- 5.1 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. Your Confidential Information shall include any data which is provided to Nutrislice and is indicated as being private or confidential in a written communication to an authorized Nutrislice employee or agent. Nutrislice's Confidential Information shall include the Software, including any designs, pages, user interfaces, html, scripts, source code, or internal mechanisms thereof, as well as business and marketing plans, technology and technical information, product plans and designs, and pricing. Confidential Information of each Party shall include the terms and conditions of this Agreement and Order Contracts and attachments thereto and business plans or processes disclosed by such Party, and any other information that is specified to be confidential in an Order Contract. (Nutrislice's responsibility with respect to Personal Data is defined in Section 8.)
- 5.2 Exclusions from Confidential Information.** Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) is received from a third party without breach of any obligation owed to the Disclosing Party, (iii) is disclosed generally by the Disclosing Party to third parties without a duty of confidentiality, or (iv) was independently developed by the Receiving Party without use or reference to Confidential Information. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled or required by law to do so, including where required under any applicable public information laws, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance if the Disclosing Party wishes to contest the disclosure.

5.3 Protection of Confidential Information. For a period of five years following the applicable date of disclosure, the Receiving Party shall (a) 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), (b) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and any affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement. You shall not disclose the terms of this Agreement or any Order Contract to any third party other than legal counsel and accountants without Nutrislice's prior written consent.

5.4 Non-Confidentiality of Data Intended for Publishing. A primary function of the Software is to assist Nutrislice's Clients in marketing and publishing information about their program and food to consumers and potential consumers amongst the general public. As such, You acknowledge that menu information that You provide to Nutrislice and publish through the Software will be made electronically available to consumers and the general public without confidentiality or access restrictions, and that third parties will inherently be able to view, consume, archive, analyze and share such data. As such, You agree to hold Nutrislice harmless for any consequence of such information being made publicly available.

6. REPRESENTATIONS, WARRANTY AND DISCLAIMER

6.1 Representations. Each Party represents that it has validly entered into this Agreement and has the legal power to do so. Nutrislice represents that it has all necessary rights, including intellectual property rights, to provide you with the Software Services specified in Your Order Contract.

6.2 WARRANTY. NUTRISLICE WARRANTS THAT THE SOFTWARE WILL PERFORM THE FUNCTIONS DESCRIBED IN YOUR ORDER CONTRACT AT THE SERVICE LEVEL COMMITMENTS SET FORTH ABOVE.

6.3 DISCLAIMER. NUTRISLICE MAKES NO OTHER WARRANTIES, GUARANTEES OR REPRESENTATIONS TO YOU AS TO THE SOFTWARE AND SOFTWARE SERVICES. ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ARE HEREBY DISCLAIMED BY NUTRISLICE AND WAIVED BY YOU, TO THE EXTENT PERMITTED BY APPLICABLE LAW.

7. ALLERGENS & DIETARY RESTRICTIONS NOTICE AND DISCLAIMER

7.1 Notice of Limitations, Acknowledgment, and Disclaimer. Depending on the Software Services You purchase, the Software may include one or more features ("Dietary Information Functionality") that may be used by End Users to identify and/or filter menu items based on particular criteria ("Dietary Information"), including ingredients, allergens, particular nutritional information (e.g., carbohydrates or other nutrient data), or conformity to mandatory or voluntary dietary restrictions. You agree and acknowledge that Nutrislice does not identify any Dietary Information and that the accuracy of any such information in the system is Your responsibility. You agree and acknowledge that the effectiveness of the Dietary Information Functionality in identifying the presence of Dietary Information is **limited** by the following: (a) Each manufacturer of items on your menus must accurately and clearly provide identify ALL the ingredients and allergens in the information they provide to You; (b) You must accurately enter or sync the information provided by the manufacturer in ALL published menu items in a timely manner before publishing the information to End Users; (c) Dietary Information may not be accurate due to substitutions, alterations, changes in supplier, mislabeling by manufacturer, or failure to update the information; (d) Authorized Users and End Users may fail to identify an allergen, mistakenly identify an allergen, or improperly enter data into the Software; and (e) in the case that Nutrislice provides human services, automation, or integration services to import Dietary Information from third party systems on your behalf, that it is Your responsibility to verify that such Dietary Information is accurately reflected in the Nutrislice system. Nutrislice hereby disclaims any responsibility and You agree to hold Nutrislice harmless for the accuracy of Dietary Information inputted into the Software, whether by You, by Your agent, or by any automated process or human input service that is provided to You as a convenience by Nutrislice. You agree to assess the output of the Dietary Information Functionality, and that if you find the output, formatting, and/or user interface of the Dietary Information Functionality to be inadequate, you will correct the information or disable the Dietary Information Functionality. **The Dietary Information Functionality should never be a substitute or replacement for competent medical advice, or End Users' own proper due diligence. Nutrislice assumes no liability for any adverse reactions to food consumed, or food items one may come in contact with.**

8. PRIVACY

8.1 Data Rights and Licenses

- 8.1.1 Rights and Responsibilities with Respect to Personal Data.** End Users shall be deemed the "Data Provider", as that term is used in this Agreement, for Personal Data that they enter into the Software. Should Nutrislice receive any Personal Data directly from Client or its employees, Client shall be deemed the "Data Provider" and owner of such Personal Data. With respect to the privacy of Personal Data entered into the software, the Data Provider thereof and Nutrislice shall have the respective rights and responsibilities with respect to such Personal Data, as set forth in applicable Privacy Laws, this Agreement, and the Nutrislice Privacy Policy ("Privacy Policy") located at the following URL and hereby incorporated into this Agreement by reference: <https://docs.nutrislice.com/privacy-policy.html>. During the Term of the Agreement, subject to rights retained by End Users under applicable Privacy Laws and the Privacy Policy, Client grants Nutrislice the rights to access, collect, use, copy, assemble, compile, analyze, modify, transform, receive and transmit Personal Data collected and/or stored using the Software, for the purposes set forth in this Agreement, to the extent that Client has the ability to grant such rights. Further, Nutrislice may utilize Personal Data in connection with optimization, statistical analysis, and the improvement of its Software and user experience, and may aggregate Personal Data to the extent allowed under applicable Privacy Laws, the de-identified results of which shall be owned exclusively by Nutrislice and may be shared with Client at Nutrislice's discretion. In the event of any conflict or inconsistency between the terms of applicable Privacy Laws, this Agreement, and/or the Privacy Policy with respect to Personal Data of which Client is the Data Provider, precedence shall be determined in that order.
- 8.1.2 Confidentiality and Nondisclosure.** Subject to the rights and responsibilities provided in this Section 8, all Personal Data disclosed or made available to Nutrislice hereunder shall be deemed Confidential Information, subject to all the obligations of confidentiality set forth in the Agreement, whether or not such Personal Data marked or otherwise indicated as being Confidential Information.
- 8.1.3 Disclosure of Rights to End Users.** In its Privacy Policy, Nutrislice shall disclose to End Users and require agreement and acknowledgement by the same regarding the types of Personal Data that are collected, the ways Personal Data is used and shared by Nutrislice, and such End Users' rights under the Nutrislice Privacy Policy and applicable Privacy Laws, including rights to request return, disposal, or erasure of such Personal Data that may have been collected, as provided in section 8.1.4.
- 8.1.4 Return and Disposal of Personal Data.** At any time during the Term of this Agreement, upon written request by to destroy or return Personal Data by the Data Provider, Nutrislice shall promptly destroy or return to the Data Provider all copies, whether in written, electronic, or other form or media, of the Data Provider's Personal Data that are in Nutrislice's possession or control. Notwithstanding the foregoing, Nutrislice may securely retain copies of any Personal Data to the extent necessary or reasonable and permitted by applicable Privacy Laws for the purposes of recordkeeping, legal compliance, accounting, system backups, or other similar purposes. Upon request by the Client, Nutrislice shall provide written certification by an officer of Nutrislice to Client that all Personal Data that has been requested to be returned or disposed of by the Data Owner has been returned or disposed of according to this Section.

8.2 Data Privacy Obligations

- 8.2.1 Client Obligations.** Client shall: (a) not provide Nutrislice with or use the Software to collect, transmit or store any Personal Health Information as defined in 45 CFR Part 160 (HIPAA), and promptly notify Nutrislice if Client discovers that it has done so; (b) not use the Software to collect, transmit, or store any Cardholder Data, as that term is defined in PCI-DSS, except through card payment forms provided by Nutrislice or one of its designated payment processing partners for the express purpose of secure PCI-compliant collection and transmission of Cardholder Data on Client's behalf; (b) comply, and require compliance by its Authorized Users (where applicable), with all Privacy Laws regarding the collection, use, handling, processing, access, security, and disclosure of Personal Data by Client or its Authorized Users through the Software; and (c) obtain, or require its Authorized Users to obtain, any and all consents from individuals, or of a parent or legal guardian in the case of minors where required by law, which are or may be required by Privacy Laws applicable to Personal Data collected or stored using the Software by Client or its Authorized Users.
- 8.2.2 Nutrislice Obligations.** Nutrislice shall implement and maintain commercially reasonable administrative, technical, and physical safeguards, including procedures and practices with regard to Personal Data in Nutrislice's possession and control designed to (i) ensure the security, confidentiality, and integrity of the Personal Data, (ii) protect against any anticipated threats or hazards to the security or integrity of the Personal Data, and (iii) protect against unauthorized access to, or unauthorized use or disclosure of, the

Personal Data, provided, however, that such security measures shall meet any requirements of any applicable Privacy Laws.

8.3 Representations and Warranties

8.3.1 Client represents and warrants to Nutrislice that (i) Client has all rights, title, and interest necessary to provide any Personal Data to Nutrislice that it enters into in the Software and to assign or grant the rights or licenses to such Personal Data under section 8.1.1; and (ii) Client has, to its knowledge, complied with all applicable Privacy Laws with respect to its use (if any) of the Software to collect and store Personal Data and its use of any Personal Data collected with or obtained from the Software.

8.3.2 Nutrislice represents and warrants to Client that (i) it has complied with all Privacy Laws; and (ii) Personal Data it collects from End Users does not violate any data, privacy, publicity or similar rights of such End Users or any third party to Nutrislice's knowledge, nor has any claim (whether or not embodied in an action, past or present) of such violation of rights been threatened or asserted, and no such claim is pending against Nutrislice.

8.4 Security Breach. In the event that Nutrislice becomes aware that any Personal Data has been disclosed by Nutrislice (or its employees, subcontractors, or agents) contrary to any applicable Privacy Law or the privacy policy under which such Personal Data was collected, or Nutrislice discovers, receives notice of, or suspects that unauthorized access, acquisition, disclosure or use of Personal Data has occurred or is likely to occur (a "Data Breach"), then Nutrislice shall give prompt notice to Client, with full particulars, and shall immediately commence a thorough investigation of any such incident. If applicable law(s) require notice to authorities or individuals, or other remedial action, then Nutrislice shall provide such notice or remedial action if it is Nutrislice's duty to do so under such law(s), or shall provide reasonable assistance to Client with such notice or remedial action if it is Client's duty to do so under such law(s).

8.5 Information Collection and Child Protection Laws. Nutrislice may provide optional Software Services to You that facilitate the collection of information (including Personal Data) by You through the Software. You agree that You are responsible for the content of any surveys, polls, data fields, and/or input prompts that You (or Authorized Users) create, control, and/or collect through the Software, including ensuring that Your use of information-collecting functionality complies with applicable laws, and that, to the extent applicable, any Personal Data You collect specifically from minors for Your benefit via the Software is done so strictly on Your behalf, to Your benefit, and under Your supervision, in compliance with applicable child protection laws including COPPA.

8.6 Passive Data Collection. You acknowledge and authorize that in order to support the internal operations of core functionalities of the Software and to provide the Software to You, the Software must passively collect usage data, which may include de-identified Personal Data or non-Personal Data, including IP addresses, device ID's, and cookies. Nutrislice may submit such data to data analytics service providers with whom Nutrislice has engaged for no purpose other than to improve the Software, to support internal operations and business decisions, and to share insights derived from such information with You.

9. TERM, RENEWAL, AND TERMINATION

9.1 Term of This Agreement. This Agreement and the Order Contract in which it is included or referenced become binding and effective on the date that You accept such Order Contract, regardless of other date(s) specified therein, including dates upon which Services or Subscriptions commence or are billed. This Agreement's term shall continue until the corresponding Order Contract and any add-ons, extensions, or addendums thereto end; notwithstanding, this Agreement may be extended in any renewals that are entered into according to Section 9.2. If this Agreement is terminated in accordance with the termination provisions of this Agreement, all Subscriptions and Services provided herewith shall effectively terminate immediately.

9.2 Renewal.

9.2.1 Renewal Subscriptions. An entire Order Contract including Subscriptions provided thereunder and this Agreement may be renewable for one or more contiguous renewal term(s). **Renewal shall not be automatic** and will only occur after the following occur: (i) Nutrislice affirmatively sends You or otherwise agrees to an updated Order Contract, renewal agreement, sales order, proposal, or quote corresponding to the renewal (a "**Renewal Contract**"); and (ii) You execute or accept the Renewal Contract. Regardless of the date of acceptance of a Renewal Contract or of payment, renewal Subscriptions will commence on a renewal date which shall be the day following the end date of the Renewal Contract's predecessor agreement. Upon renewal, unless superseded or replaced by updated terms specifically provided within a Renewal Contract, all Subscriptions, commitments, terms, and responsibilities from the Renewal Contract's predecessor agreement (including any applicable addendums, Add-on Contracts, or

amendments thereto) will remain effective and will terminate at the end of the term of the Renewal Contract. Unless otherwise agreed by the Parties, Renewed Subscriptions may only be terminated prior to the end of a Renewal Contract under the same conditions and provisions for termination as the initial Agreement. Nutrislice reserve the right to make renewal contingent upon You executing a new or updated Order Contract, Software Subscription Agreement (or equivalent, which would supersede this Agreement), and/or other terms; or to refuse altogether to offer You a renewal of an agreement or Subscription.

- 9.2.2 Inflation and/or Pricing Increase on Renewal.** Nutrislice reserves the right and discretion to adjust pricing for any renewal based on inflation, cost increases, or market reasons. A pricing increase upon renewal may be reflected in any proposal, invoice or updated Order Contract, with or without prior notice, in which case renewal will be contingent upon payment of the increased price(s).

- 9.3 Termination for Cause.** This Agreement may be terminated for cause under the following circumstances: (a) if a Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, the other Party may terminate this Agreement for cause immediately; (b) Nutrislice may immediately terminate this Agreement for cause or suspend service if You violate Nutrislice's intellectual property rights or violate your responsibilities under Section 2.2(b); (c) You may terminate this Agreement if an Error constituting a material breach as described in Section 9.4 occurs; (d) for other material breaches of this Agreement or an Order Contract, a Party may terminate this Agreement following 30 days' written notice to the other Party of the material breach, if such breach remains uncured at the expiration of such period; provided that such notice includes full information regarding the material breach, is founded on specific material terms of this Agreement or Order Contract, and describes what, with reference to the terms of this Agreement or the Order Contract, may be done to by the other Party to cure such breach. If the Party accused of breach under subsection (c) or (d) of this paragraph disputes whether a material breach has occurred, and agreement or resolution cannot be reached between the Parties, the Parties agree to resolve the dispute according to Section 12.5 or an alternative dispute resolution method agreed upon by the parties, within 30 days if possible, and to delay the termination until the dispute is resolved. In no event shall any termination relieve You of the obligation to pay any fees payable to Nutrislice for the period prior to the effective date of termination.

- 9.4 Bugs, Errors, Downtime.** Although Nutrislice will make reasonable efforts to test all software prior to release, and to correct any bugs, errors, data loss and/or downtime in the Software ("Error(s)") that You bring in a reasonable and fully descriptive manner to Nutrislice's attention; Errors shall not be considered a material breach nor be sufficient cause to terminate this Agreement under Section 9.3 unless: (i) the Error is sufficiently problematic to completely or substantially inhibit Your use of the Software Services; (ii) there is no reasonable work-around; (iii) You provide Nutrislice with notice that you intend to terminate this Agreement if the Error is not cured, along with any information available to You regarding the Error that Nutrislice request in order to evaluate or troubleshoot the Error; and (iv) Nutrislice fails to remedy the Error within five (5) business days after being given such notice and full information regarding the Error. A lack of a requested feature or functionality in the software, which was not available in the Software when you purchased a Subscription thereto, replacement of a feature or function of the Software, removal of a non-critical function of the software, or a bug/ flaw in the software which does not meet the criteria in this section, shall not be deemed an Error or be sufficient grounds to terminate the Agreement for cause.

- 9.5 Termination / Discontinuance for Convenience.** At its convenience, Client may terminate any active Subscription(s) hereunder, or the Agreement itself along with all active Subscriptions, upon payment to Nutrislice, in addition to any outstanding Subscription fees and other payable amounts as of the termination date, as follows: one twelfth (1/12) of the corresponding annual Subscription Fee(s) for all Subscriptions to be terminated, multiplied by the number of remaining months in the Subscription(s); along with all other non-Subscription fees and costs to which Client has agreed prior to such termination for convenience becoming effective. Any repudiation, abandonment, discontinuance of payment, or termination for reasons other than for cause as provided in Section 9.3 shall be deemed an effective termination for convenience under this Section.

10. LIMITATION OF LIABILITY

- 10.1 Limitation of Liability.** NEITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID, PAYABLE, OR TO BE PAID BY OR TO SUCH PARTY HEREUNDER. NOTWITHSTANDING THE FOREGOING, NOTHING IN THE AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR WILLFUL GROSS MISCONDUCT OR CRIMINAL ACTS, OR SUCH PARTY'S BREACH OF ANY CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS UNDER THIS AGREEMENT.

- 10.2 Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS, ORDERS, REVENUE, OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE OR THE SERVICES, INCLUDING ANY DOWNTIME OR ERROR STATE OF ANY SOFTWARE, SOFTWARE COMPONENT OR HARDWARE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

11. DEFENSE OF THIRD PARTY INFRINGEMENT CLAIMS

- 11.1** Nutrislice will defend, indemnify and hold You harmless against any claims asserting that the Software infringes any intellectual property right of a third party, and will pay any and all damages finally awarded by a court and actually paid by You, or agreed to in a final settlement by Nutrislice and attributable to such claim. Nutrislice's obligations under this provision are subject to Your not having compromised or settled such claim and doing the following: (a) notifying Nutrislice of the claim in writing, as soon as You learn of it; (b) providing Nutrislice with all reasonable assistance and information to enable Nutrislice to perform Nutrislice's duties under this Section; and (c) allowing Nutrislice sole control of the defense and all related settlement negotiations. Notwithstanding the foregoing, You may participate at Your expense in the defense of any such claim with Your own counsel, provided that Nutrislice retains sole control of the claim. You have the right to approve any settlement that affirmatively places on You an obligation that has a material adverse effect on You other than the obligations to cease using the affected Software or to pay sums indemnified under this Section. Such approval will not be unreasonably withheld.
- 11.2** In the unlikely event that the Software is found to infringe any intellectual property right of a third party, or if Nutrislice determines in Nutrislice's sole opinion that the Software is likely to be found to infringe the same, then Nutrislice will either: (i) obtain for You the right to continue to use the Software; or (ii) modify the Software so as to make it non-infringing, or replace it with a non-infringing equivalent substantially comparable in functionality; or, if Nutrislice determines in its sole opinion that "(i)" and/or "(ii)" are not reasonable, Nutrislice may (iii) terminate Your rights and Nutrislice's obligations under this Agreement with respect to such Software, and in such case shall refund to You the remaining, unused pre-paid fees for any Subscription or Services. Notwithstanding the above, Nutrislice will not be liable for any infringement claim to the extent that it is based upon: (1) modification of the Software other than by Nutrislice; (2) combination, use, or operation of the Software with products not specifically authorized by Nutrislice to be combined with the Software; (3) use of the Software other than in accordance with this Agreement; or (4) Your continued use of infringing Software after Nutrislice, for no additional charge, supplies or offers to supply modified or replacement non-infringing Software.
- 11.3** THIS SECTION STATES YOUR SOLE AND EXCLUSIVE REMEDY AND NUTRISLICE'S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, ALL WARRANTIES AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, STATUTORY, EXPRESS, OR IMPLIED ARE EXPRESSLY DISCLAIMED.

12. MISCELLANEOUS PROVISIONS

- 12.1 Hardware.** Client and Nutrislice acknowledge that some Nutrislice Software may require or utilize hardware with specific features or capabilities. As particular examples, Nutrislice Digital Signage requires compatible media player hardware and/or displays, installed on location, which are capable and configured to run the Nutrislice Digital Signage Player Software to Nutrislice's specification, and Ordering Software may benefit from ticket printer hardware and/or other hardware. Such Hardware may be purchased from Nutrislice with or without corresponding installation and/or technical service to be performed on site. Nutrislice shall not be responsible for operation of Software in conjunction with Hardware that is not provided and installed by Nutrislice, or certified by Nutrislice to be compatible with the Software. Client may request either a current price list or a specific quote for hardware and technical services, which will be provided by Nutrislice within 7 days following the request. Any quoted prices for hardware (including those provided with an Order Contract or Add-on Contract) will be valid for 60 days. Additional volume discounts on hardware purchases may be available for large bulk orders and can be provided as a custom quote. for the purchase of hardware and technical services corresponding to a valid quote or proposal for the same. In the event that Client elects to purchase hardware and/or associated technical services from Nutrislice according to a valid quote for hardware and associated services provided during the term of this Agreement, receipt by Nutrislice of a

signed Add-on Contract, a valid and approved PO, an authorized and completed order form, or other purchase instrument from You that is authorized by Nutrislice, or of payment, shall constitute a binding purchase contract between the parties for the products and services designated therein, and Client agrees to be bound with respect to such purchases by any applicable terms and conditions of this Agreement and of the Nutrislice Terms and Conditions of Hardware and Technical Services Sales and Support – v. 1.5, located as of the Effective Date of this Agreement at the following URL (or available via email upon request) and hereby incorporated into this Agreement by reference: https://docs.nutrislice.com/Hardware-and-Technical-Services-Terms-and-Conditions-v1_5.pdf, or any authorized updated version or replacement thereof that is effective at the time of purchase of hardware and/or technical services, provided that a link to or copy of such updated version or replacement has been included with an authorized quote or otherwise provided to Client prior to the purchase. Unless other payment terms are provided in an authorized invoice or mutual agreement, all hardware invoices must be paid prior to fulfillment.

- 12.2 Notices.** All notices required under this Agreement shall be specific, in writing, and effective upon receipt. It is Your responsibility to provide Nutrislice with updated notice contact information and to verify Nutrislice's receipt thereof if for any reason your contact information changes or You require that notices be addressed to different contact information than that specified in the Order Contract. Any required notice to You under this Agreement shall be sent via email or posted by certified mail or overnight courier with delivery verification capability to the contact specified in the Order Contract or other updated notice email and/or mailing address provided by You per this section. Notices to Nutrislice shall be addressed to legal@nutrislice.com or to Nutrislice, Inc., Attn: Legal, 295 Interlocken Blvd, #100 Broomfield, Colorado 80021. Telephone, facsimile and other notices do not constitute notice hereunder.
- 12.3 Severability.** If for any reason this Agreement or any portion thereof is held or deemed by a court of competent jurisdiction to be invalid or unenforceable under any applicable law or equitable principle or is so held by applicable court decision, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision will be changed, enforced and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision to the maximum allowable extent within the limits of applicable law, equity or applicable decisions, and the remaining provisions of this Agreement shall remain binding upon the Parties in full force and effect.
- 12.4 Independent Contractors.** You and Nutrislice are independent contractors; neither Party is the partner, joint venture, agent, representative or employee of the other Party; and nothing in this Agreement will be construed to create any relationship between them other than an independent contractor relationship. Neither Party shall have any responsibility or liability for the actions or inactions of the other Party, except as expressly provided herein. Neither Party will have any right or authority to bind or obligate the other Party in any manner or make any representation or warranty on behalf of the other Party.
- 12.5 Limit on Cause of Action.** All legal or equitable action(s) arising out of this Agreement that is commenced or initiated by You shall be forever barred unless commenced within one (1) year of the act(s) or omission(s) giving rise to the right(s)/cause(s) of action. The Parties hereby expressly agree that this Section 11.4 is an express waiver by You of all applicable statutes of limitation and/or periods of liberative prescription that may be held or deemed to be applicable by any court of proper jurisdiction.
- 12.6 Dispute Resolution.** Unless alternative dispute resolution is mutually agreed upon by the parties, any dispute arising under this Agreement shall be settled in a court of proper jurisdiction in Your state.
- 12.7 Force Majeure.** Neither You nor Nutrislice will be liable to each other or any third Party by reason of any failure or delay in the performance of Nutrislice's obligations hereunder on account of strikes, shortages, riots, insurrection, terrorist actions or threats, fires, flood, storms, explosions, acts of God, war (declared or undeclared), governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of You or Nutrislice.
- 12.8 No Waiver.** The failure of You or Nutrislice to require performance of any provision of this Agreement will not affect the full right of You or Nutrislice to require such performance at any time hereafter; nor will the waiver by You or Nutrislice of a breach of any provision hereof be taken or held to be a waiver by You or Nutrislice of that provision or of the right to demand performance by legal action, equitable action or otherwise.
- 12.9 Assignment.** Neither this Agreement nor any rights or obligations of You hereunder may be assigned or transferred by You in whole or in part, whether by operation of law, equity or otherwise, without the prior written approval of Nutrislice. Nutrislice may exercise full transfer and assignment rights in any manner at its discretion and specifically may sell, pledge, mortgage, hypothecate, or grant a security interest or security right in, and/or otherwise assign its rights and responsibilities herein to a third party it deems will responsibly carry out the obligations herein that are attributed to Nutrislice.

- 12.10 Survival.** The rights and obligations of the parties contained in Sections 3, 4, 5, 8, 10 and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement shall survive any termination or expiration of this Agreement or of any individual Subscriptions.
- 12.11 Entire Agreement.** The Order Contract, this Agreement and any attachments or exhibits herewith, and any properly executed subsequent Add-on Contracts, addenda, amendments, extensions or other mutual agreements described or anticipated herein constitute the entire, complete and exclusive agreement between the Parties with respect to the subject matter hereof and supersede any prior or concurrent agreements between the Parties with respect to such subject matter, whether in written or oral form.
- 12.12 Amendment, Conflicting Terms.** This Agreement and/or the Order Contract may be amended at any time by mutual written agreement of both parties. The Order Contract may also be amended by subsequent addenda, amendments, Add-on Order Contracts or other agreement signed by both parties. In the event of any conflict or inconsistency between this Agreement and the terms stated in an Order Contract, Add-on Contract, or other subsequent agreement between the parties, the terms thereof shall only prevail if the same is signed by an Officer, Vice President, Controller, or Director of Finance of Nutrislice. Any term or condition stated in a purchase order provided by You that is additional to or inconsistent with this Agreement shall not be binding.



Sales Order

This Sales Order is a contract between Kenton County SD ("Client") and Nutrislice, Inc. ("Nutrislice") for the purchase of Software, Services, and/or Products described below.

CONTACT INFORMATION

Nutrislice		Kenton County SD	
Name: Emma Jarard		Name: Elizabeth Hord	
Email: emma@nutrislice.com		Email: elizabeth.hord@kenton.kyschools.us	
Phone:		Phone: 8594459277	
Address: 295 Interlocken Blvd. #100 Broomfield, CO 80021 US		Address: 1055 EATON DR FT WRIGHT, Kentucky 41017-9655 United States	

Term & Dates

Contract Term: 12 Months

Contract Start Date: December 01, 2021

Contract End Date: November 30, 2022

Billing & Cost Summary

Invoice Frequency: Annually

Payment Terms: Net 30

First Invoice – Amount: \$4,452.00

First Invoice Date: December 01, 2021

Total Contract Amount¹: \$4,452.00

¹Calculated for the entire Contract Term based on current purchases – subject to change with any add-on purchases or addendums.



Purchase Details

Nutrislice agrees to provide the Software, Services, and/or Products specified in the following table(s), and Client agrees to pay the corresponding prices and fees, as follows:

Recurring Costs (Software Subscriptions & Services)			
Description	Qty	Unit Price (Annual)	Total Price (Annual)
Nutrislice Menus - Pro (Per Each)	1	\$4,452.00	\$4,452.00
Annual Total:			\$4,452.00
Total Recurring Costs for 12-month Contract Term:			\$4,452.00

Recurring Costs are due Annually, per the payment terms agreed to in this order.

Terms and Conditions

Nutrislice's agreement to provide the Software, Services, and/or Products purchased hereunder is subject to and conditioned upon Client's agreement to and compliance with certain terms, conditions, and obligations provided in the following agreement(s), which shall hereby be incorporated into this Sales Order contract by reference (collectively, the "Terms and Conditions"):

- > The *Nutrislice Software Subscription Agreement*, version 3.2, located at the following URL: https://docs.nutrislice.com/Nutrislice-Subscription-Agreement-v3_2.pdf



Approval

By affixing my signature, I hereby do accept and agree to this Sales Order contract, including all Terms and Conditions referenced above, and any attachments, schedules, addendums, or exhibits attached hereto, on behalf of the party named below, and do hereby acknowledge that I have full authority to do so.

For Kenton County SD:

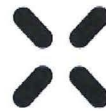
Name: Elizabeth Hord
Title: Foodservice Director

Date: _____

For Nutrislice:

Name: Stanton Aydlett
Title: Vice President, Finance & Accounting

Date: _____



Electronic copies of the Terms and Conditions can be downloaded at the URL(s) above and are also available upon request. By signing this Sales Order, Client acknowledges that it was able to access and read the above Terms and Conditions and agrees to be bound by the Terms and Conditions as if they were directly set forth in this Sales Order contract.² The contractual purchase obligations provided in this Sales Order, including the Terms and Conditions and any attachment hereto, shall be effective and binding upon the parties upon execution of this Sales Order, irrespective of its Contract Start Date.

[Signature Page Follows]

²Any future versions or updates to the Terms and Conditions referenced above will *NOT* become effective without Client's consent. If a modified copy or version of any Terms and Conditions document referenced above is directly included or attached with this Sales Order, the included or attached version will supersede the version of the same document hosted at any URL indicated above.