

H3 SOLUTIONS SOFTWARE AS A SERVICE AGREEMENT (V.10)

PLEASE READ THIS AGREEMENT BEFORE USING H3 SOLUTIONS' SERVICES. BY ACCESSING OR USING H3 SOLUTIONS' SERVICES OFFERING, YOU ("the Customer") SIGNIFY ACCEPTANCE OF AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICES. IF THE PARTIES HAVE A FULLY EXECUTED AGREEMENT THAT EXPRESSLY GOVERNS ORDERS FOR H3 SOLUTIONS' SOFTWARE AS A SERVICE AGREEMENT, SUCH AGREEMENT SHALL SUPERSEDE THIS AGREEMENT.

This Software as a Service Agreement ("**Agreement**") is entered into between Customer and H3 Solutions, Inc., a Virginia corporation ("**H3S**"), with its principal place of business at 10432 Balls Ford Rd. STE 230 Manassas, VA 20109. H3S and Customer agree that the following terms and conditions will apply to the services provided under this Agreement and Orders placed thereunder.

1. DEFINITIONS

"**Administrator User**" means each Customer employee designated by Customer to serve as technical administrator of the SaaS Services on Customer's behalf.

"**Billing Portal**" means the site which is used by the Customer to sign up for a free trial as well as manage payment for their subscription.

"**Customer Content**" means all data and materials provided by Customer to H3S for use in connection with the SaaS Services.

"**Documentation**" means the user guides, online help, release notes, training materials and other documentation provided or made available by H3S to Customer regarding the use or operation of the SaaS Services.

"**Host**" means the computer equipment on which the Software is installed, which is owned and operated by H3S or its subcontractors.

"**SaaS Services**" refer to the generally available web-based, on-line, hosted software as a service and provided by H3S for use by the Customer. Interchangeable in this agreement.

"**Subscription Term**" shall mean that period of time the Customer maintains an active subscription to the SaaS Services.

2. SAAS SERVICES

2.1 During the Subscription Term, Customer will receive a nonexclusive, non-assignable, royalty free, worldwide right to access and use the SaaS Services.

2.2 Customer acknowledges that this Agreement is a services agreement and H3S will not be delivering copies of the Software to Customer as part of the SaaS Services.

3. RESTRICTIONS

Customer shall not, and shall not permit anyone to: (i) copy or republish the SaaS Services or Software, (ii) modify or create derivative works based upon the SaaS Services or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the SaaS Services or in the Documentation, (vi) reverse engineer, decompile, disassemble, or otherwise attempt

to derive the source code of the Software used to provide the SaaS Services, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the SaaS Services or use the Documentation in order to build a similar product or competitive product. Subject to the limited licenses granted herein, H3S shall own all right, title and interest in and to the Software, services, Documentation, and other deliverables provided under this SaaS Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights therein. Customer agrees to assign all right, title and interest it may have in the foregoing to H3S.

4. CUSTOMER RESPONSIBILITIES

- 4.1 Compliance with Laws. Customer shall comply with all applicable local, state, national and foreign laws in connection with its use of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Customer acknowledges that H3S exercises no control over the content of the information transmitted by Customer or their users through the SaaS Services. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- 4.2 Unauthorized Use; False Information. Customer shall: (a) notify H3S immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (b) report to H3S immediately and use reasonable efforts to stop any unauthorized use of the SaaS Services that is known or suspected by Customer or any user, and (c) not provide false identity information to gain access to or use the SaaS Services.
- 4.3 Administrator Access. Customer shall be solely responsible for the acts and omissions of its Administrator Users. H3S shall not be liable for any loss of data or functionality caused directly or indirectly by the Administrator Users.
- 4.4 Customer Input. Customer is solely responsible for collecting, inputting and updating all Customer Content stored on the Host, and for ensuring that the Customer Content does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious. Customer shall: (i) notify H3S immediately of any unauthorized use of any password or user id or any other known or suspected breach of security, (ii) report to H3S immediately and use reasonable efforts to stop any unauthorized use of the Service that is known or suspected by Customer, and (iii) not provide false identity information to gain access to or use the Service.
- 4.5 License from Customer. Subject to the terms and conditions of this SaaS Agreement, Customer shall grant to H3S a limited, non-exclusive and non-transferable license, to copy, store, configure, perform, display and transmit Customer Content solely as necessary to provide the SaaS Services to Customer.
- 4.6 Ownership and Restrictions. Customer retains ownership and intellectual property rights in and to its Customer Content. H3S or its licensors retain all ownership and intellectual property rights to the services, Software programs, and anything developed and delivered under the Agreement. Third party technology that may be appropriate or necessary for use with some H3S programs is specified in the program Documentation or ordering document as applicable. Customer's right to use such third party technology is governed by the terms of the third party technology license agreement specified by H3S and not under the Agreement.
- 4.7 Suggestions. H3S shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the SaaS Services any suggestions, enhancement requests, recommendation or other feedback provided by Customer, including Users, relating to the operation of the SaaS Services.

5. ORDERS AND PAYMENT

- 5.1 Orders. Customer shall order SaaS Services through the Billing Portal or through a direct contract with H3S. All services acquired by Customer shall be governed exclusively by this SaaS Agreement and the applicable contract. In the event of a conflict between the terms of a contract and this SaaS Agreement, the terms of the contract shall take precedence.
- 5.2 Invoicing and Payment. Unless otherwise provided in a contract, the Customer's credit card will be charged for services every month. All fees are stated in United States Dollars, and must be paid by Customer to H3S in United States Dollars.

6. TERM AND TERMINATION

- 6.1 Term of SaaS Agreement. The term of this SaaS Agreement shall begin on the Effective Date and shall continue until terminated by either party as outlined in this Section.
- 6.2 Termination. Either party may terminate this SaaS Agreement immediately upon a material breach by the other party that has not been cured within thirty (30) days after receipt of notice of such breach.
- 6.3 Suspension for Non-Payment. H3S reserves the right to suspend delivery of the SaaS Services if Customer fails to timely pay any undisputed amounts due to H3S under this SaaS Agreement, but only after H3S notifies Customer of such failure and such failure continues for fifteen (15) days. Suspension of the SaaS Services shall not release Customer of its payment obligations under this SaaS Agreement. Customer agrees that H3S shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to suspension of the SaaS Services resulting from Customer's nonpayment.
- 6.4 Suspension for Ongoing Harm. H3S reserves the right to suspend delivery of the SaaS Services if H3S reasonably concludes that Customer's use of the SaaS Services is causing immediate and ongoing harm to H3S or others. In the extraordinary case that H3S must suspend delivery of the SaaS Services, H3S shall immediately notify Customer of the suspension and the parties shall diligently attempt to resolve the issue. H3S shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or relating to any suspension of the SaaS Services in accordance with this Section 6.4. Nothing in this Section 6.4 will limit H3S' rights under Section 6.5 below.
- 6.5 Effect of Termination.
- (a) Upon termination of this SaaS Agreement or expiration of the Subscription Term, H3S shall immediately cease providing the SaaS Services and all usage rights granted under this SaaS Agreement shall terminate.
 - (b) If H3S terminates this SaaS Agreement due to a breach by Customer, then Customer shall immediately pay to H3S all amounts then due under this SaaS Agreement and to become due during the remaining term of this SaaS Agreement, but for such termination.
 - (c) Upon termination of this SaaS Agreement and upon subsequent written request by the disclosing party, the receiving party of tangible Confidential Information shall immediately return such information or destroy such information and provide written certification of such destruction, provided that the receiving party may permit its legal counsel to retain one archival copy of such information in the event of a subsequent dispute between the parties.

7. WARRANTIES

7.1 Warranty. H3S represents and warrants that it will provide the SaaS Services in a professional manner consistent with general industry standards and that the SaaS Services will perform substantially in accordance with the Documentation. For any breach of a warranty, Customer's exclusive remedy shall be as provided in Section 6, Term and Termination.

7.2 H3S WARRANTS THAT THE SAAS SERVICES WILL PERFORM IN ALL MATERIAL RESPECTS IN ACCORDANCE WITH THE DOCUMENTATION. H3S DOES NOT GUARANTEE THAT THE SAAS SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT H3S WILL CORRECT ALL SAAS SERVICES ERRORS. CUSTOMER ACKNOWLEDGES THAT H3S DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY H3S (EXPRESS OR IMPLIED) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT. NEITHER H3S NOR ANY OF ITS LICENSORS OR OTHER SUPPLIERS WARRANT OR GUARANTEE THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED, VIRUS-FREE OR ERROR-FREE, NOR SHALL H3S OR ANY OF ITS SERVICE PROVIDERS BE LIABLE FOR UNAUTHORIZED ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S OR ANY USER'S DATA, FILES, OR PROGRAMS.

8. LIMITATIONS OF LIABILITY

NEITHER PARTY (NOR ANY LICENSOR OR OTHER SUPPLIER OF H3S) SHALL BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST BUSINESS, PROFITS, DATA OR USE OF ANY SERVICE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY IN CONNECTION WITH THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), EVEN IF FORESEEABLE OR THE OTHER PARTY HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY'S AGGREGATE LIABILITY FOR DAMAGES UNDER THIS SAAS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM (INCLUDING NEGLIGENCE), SHALL EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THIS SAAS AGREEMENT DURING THE 12 MONTHS PRECEDING THE DATE THE CLAIM AROSE. The foregoing limitations shall not apply to the parties' obligations (or any breach thereof) under Sections entitled "Restriction", "Indemnification", or "Confidentiality".

9. INDEMNIFICATION

9.1 Indemnification by H3S. If a third party makes a claim against Customer that the SaaS Services infringes any patent, copyright or trademark, or misappropriates any trade secret, or that H3S' negligence or willful misconduct has caused bodily injury or death, H3S shall defend Customer and its directors, officers and employees against the claim at H3S' expense and H3S shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by H3S, to the extent arising from the claim. H3S shall have no liability for any claim based on (a) the Customer Content, (b) modification of the SaaS Services not authorized by H3S, or (c) use of the SaaS Services other than in accordance with the Documentation and this SaaS Agreement. H3S may, at its sole option and expense, procure for Customer the right to continue use of the SaaS Services, modify the SaaS Services in a manner that does not materially impair the functionality, or terminate the Subscription Term.

9.2 Indemnification by Customer. If a third party makes a claim against H3S that the Customer Content infringes any patent, copyright or trademark, or misappropriates any trade secret, Customer shall defend H3S and its directors, officers and employees against the claim at Customer's expense and Customer shall pay all losses, damages and expenses (including reasonable attorneys' fees) finally awarded against such parties or agreed to in a written settlement agreement signed by Customer, to the extent arising from the claim.

9.3 Conditions for Indemnification. A party seeking indemnification under this section shall (a) promptly notify the other party of the claim, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

10. CONFIDENTIALITY

10.1 Definition. “**Confidential Information**” means any information disclosed by a party to the other party, directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the receiving party to be “confidential” or “proprietary” within 30 days of such disclosure, (c) is specifically deemed to be confidential by the terms of this SaaS Agreement, or (d) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself. Confidential Information will also include information disclosed by third parties to a disclosing party under an obligation of confidentiality. Subject to the display of Customer Content as contemplated by this SaaS Agreement, Customer Content is deemed Confidential Information of Customer.

10.2 Confidentiality. During the term of this SaaS Agreement and for 5 years thereafter (perpetually in the case of software), each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this SaaS Agreement, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, each party shall use at least the same degree of care, but not less than a reasonable degree of care, it uses to prevent the disclosure of its own confidential information to prevent the disclosure of Confidential Information of the other party. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party may disclose Confidential Information of the other party on a need-to-know basis to its contractors who are subject to confidentiality agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services on behalf of the receiving party.

10.3 Exceptions. Confidential Information excludes information that: (a) is known publicly at the time of the disclosure or becomes known publicly after disclosure through no fault of the receiving party, (b) is known to the receiving party, without restriction, at the time of disclosure or becomes known to the receiving party, without restriction, from a source other than the disclosing party not bound by confidentiality obligations to the disclosing party, or (c) is independently developed by the receiving party without use of the Confidential Information as demonstrated by the written records of the receiving party. The receiving party may disclose Confidential Information of the other party to the extent such disclosure is required by law or order of a court or other governmental authority, provided that the receiving party shall use reasonable efforts to promptly notify the other party prior to such disclosure to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Each party may disclose the existence of this SaaS Agreement and the relationship of the parties, but agrees that the specific terms of this SaaS Agreement will be treated as Confidential Information; provided, however, that each party may disclose the terms of this SaaS Agreement to those with a need to know and under a duty of confidentiality such as accountants, lawyers, bankers and investors.

11. GENERAL PROVISIONS

11.1 Non-Exclusive Service. Customer acknowledges that SaaS Services is provided on a non-exclusive basis. Nothing shall be deemed to prevent or restrict H3S's ability to provide the SaaS Services or other technology, including any features or functionality first developed for Customer, to other parties.

- 11.2 Assignment. Neither party may assign this SaaS Agreement or any right under this SaaS Agreement, without the consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that either party may assign this SaaS Agreement to an acquirer of all or substantially all of the business of such party to which this SaaS Agreement relates, whether by merger, asset sale or otherwise. This SaaS Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Either party may employ subcontractors in performing its duties under this SaaS Agreement, provided, however, that such party shall not be relieved of any obligation under this SaaS Agreement.
- 11.3 Notices. Except as otherwise permitted in this SaaS Agreement, notices under this SaaS Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after sending in email.
- 11.4 Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, such party or any subcontractor is prevented from performing any obligation or Service, in whole or in part, as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of terrorism or war, epidemics, communication line failures, and power failures.
- 11.5 Waiver. No waiver shall be effective unless it is in writing and signed by the waiving party. The waiver by either party of any breach of this SaaS Agreement shall not constitute a waiver of any other or subsequent breach.
- 11.6 Severability. If any term of this SaaS Agreement is held to be invalid or unenforceable, that term shall be reformed to achieve as nearly as possible the same effect as the original term, and the remainder of this SaaS Agreement shall remain in full force.
- 11.7 Entire SaaS Agreement. This SaaS Agreement contains the entire agreement of the parties and supersedes all previous oral and written communications by the parties, concerning the subject matter of this SaaS Agreement. This SaaS Agreement may be amended solely in a writing signed by both parties. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and shall be void unless specifically accepted in writing by the party against whom their enforcement is sought; mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.
- 11.8 Survival. Sections 3, and 6 through 11 of this SaaS Agreement shall survive the expiration or termination of this SaaS Agreement for any reason.
- 11.9 Publicity. H3S may include Customer's name and logo in its customer lists and on its website. Upon acceptance, H3S may issue a high-level press release announcing the relationship and the manner in which Customer will use the H3S solution. H3S shall coordinate its efforts with appropriate communications personnel in Customer's organization to secure approval of the press release if necessary.
- 11.10 Export Regulations. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the SaaS Services. Customer agrees that such export control laws govern its use of the SaaS Services (including technical data) and any services deliverables provided under this Agreement, and Customer agrees to comply with all such export laws and regulations. Customer agrees that no data, information, software programs and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws.
- 11.11 No Third Party Beneficiaries. This SaaS Agreement is an agreement between the parties, and confers no rights upon either party's employees, agents, contractors, partners of customers or upon any other person or entity.
- 11.12 Independent Contractor. The parties have the status of independent contractors, and nothing in this SaaS Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this SaaS Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel.

- 11.13 Statistical Information. H3S may anonymously compile statistical information related to the performance of the Services for purposes of improving the SaaS service, provided that such information does not include Customer's data.
- 11.14 Governing Law. This SaaS Agreement shall be governed by the laws of the State of Virginia, excluding its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 11.15 Compliance with Laws. H3S shall comply with all applicable local, state, national and foreign laws in connection with its delivery of the SaaS Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data
- 11.16 Dispute Resolution. Customer's satisfaction is an important objective to H3S in performing its obligations under this SaaS Agreement. Except with respect to intellectual property rights, if a dispute arises between the parties relating to the interpretation or performance of this SaaS Agreement or the grounds for the termination hereof, the parties agree to hold a meeting within fifteen (15) days of written request by either party, attended by individuals with decision-making authority, regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute prior to pursuing other available remedies. If, within 15 days after such meeting, the parties have not succeeded in resolving the dispute, either party may protect its interests by any lawful means available to it.