



TERMS AND CONDITIONS

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PLEASE READ THIS AGREEMENT BEFORE USING HELM360s SERVICES. BY ACCESSING OR USING HELM360s IDENTITY MANAGEMENT SOFTWARE OR 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 HELM360s SOFTWARE AS A SERVICE AGREEMENT, SUCH AGREEMENT SHALL SUPERSEDE THIS AGREEMENT.

This Software as a Service Agreement (“Agreement”) is entered into between Customer and Helm360, a division of California Creative Solutions, Inc. (collectively “we”, “us”, or “our”), with its principal place of business located at 13475 Danielson Street, Suite 220, Poway, CA 92064, agrees that the following terms and conditions will apply to the services provided under this Agreement and Orders placed thereunder (the “Sellers Terms and Conditions Agreement”).

## **1 General Terms and Conditions**

### **1.1 Length of Term.**

This Agreement shall commence on the Effective Date as defined at the end of this Agreement and shall continue for a period of one (1) year. Such initial term requires the commitment of Customer throughout its duration. An option to renew the Agreement will include separate financial and licenses fees which will be discussed by the Parties if the Parties express an interest to renew, and the Agreement shall be detailed in a separate agreement.

### **1.2 Delivery.**

The Product will be made accessible by Helm360 to Customer through cloud-based services. All transmission, processing, and storage of data shall strictly be for the purpose of Helm360’s delivery of services to Customer. For ease of processing, data may be stored in Helm360’s cloud service for up to 90 days unless a lesser period is otherwise specified by Customer.

### **1.3 License and Restrictions.**

Helm360 hereby grants in favor of the Customer a non-exclusive, limited revocable, and non-transferrable license to use Termi and any related documentation according to the provisions contained herein exclusively for the Customer’s internal business operations during the term of this Agreement. The license is personal to Customer and does not grant any rights to affiliates, including any entities in which Customer has an ownership stake.

### **1.4 General Obligations and Responsibilities**

Helm360 will grant to Customer a worldwide, non-exclusive, non-transferable license to use the Product for Customer’s own business purpose. As part of delivery, Helm360 shall generate an account for Customer and provide login credentials for that account. Customer shall not use the Product in any way that causes, or may cause, damage to the Product or impairment of the availability or accessibility of the

Product. If necessary for Helm360 to adequately customize, implement and support the use the Product during the Term, Customer agrees to provide the necessary hardware and system access to Customer's systems or servers, including but not limited to, on-site and remote access.

### **1.5 Compliance with Laws.**

Customer shall, at all times, comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement. Customer shall indemnify Helm360 for any costs, expenses, injury and damage caused to Helm360 as a result of Customer's failure to comply with applicable laws, rules, ordinances, decrees and regulations. Similarly, Helm360 shall, at all times, comply with all laws, rules, ordinances, decrees and regulations applicable to its activities under this Agreement. Helm360 shall indemnify Customer for any costs, expenses, injury and damage caused to Customer as a result of Helm360's failure to comply with applicable laws, rules, ordinances, decrees and regulations.

### **1.6 Relationship Between the Parties.**

The relationship of the Parties hereto is purely contractual. This Agreement does not make either party the employee, franchisee, agent or legal representative of the other for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party. The Parties acknowledge and agree that no partnership or employment relationship can be construed by this Agreement. The Parties also agree that the Agreement does not establish a joint venture.

## **2 Intellectual Property**

Helm360 hereby represents and warrants that Helm360 (i) owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Product and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Product, whether made by Helm360 or any third party engaged by Helm360, (ii) has full authority to grant the rights granted herein without the consent of any third party, (iii) that neither the granting of the license rights herein by Helm360 nor the use of the Product by Customer pursuant to the terms of this Agreement will in any way constitute any infringement or other violation of any copyright, trade secret, trade mark, patent, invention, proprietary information, nondisclosure or other rights of any third party. The Product is developed by Helm360 and any and all rights to the Product intellectual property rights, title, and interest of Product shall remain exclusively with Helm360. Customer agrees that it shall not interfere with such rights in any way, including but not limited to, modifying the Product or creating derivative works thereof, merging the Product with other software, reverse engineering, decompiling, disassembling, or otherwise attempting to derive the source code for the Product, disclosing to third parties the results of any bench tests performed on the Product without Helm360's prior written consent, or otherwise use, copy or distribute the Product except as expressly allowed under this Agreement. For the avoidance of doubt, such Intellectual Property Rights may include, but is not limited to, Intellectual Property Rights in any and all inventions, improvements, processes, ideas, technologies, know-how, work product, concepts, software programs, computer language/code, compilations, documentation and other intellectual

property conceived, developed or originated by Helm360 individually or jointly with Customer in connection with the Product license.

### **3 Confidentiality**

Customer, its employees, and agents shall not disclose to anyone other than authorized employees of Helm360 or use for the benefit of Customer and its employees or for any entity other than Helm360, any information of a confidential nature, including but not limited to, information relating to (1) any material or intellectual property, (2) any of Helm360's projects, (3) the technical, commercial or any other affairs of Helm360, or (4) any confidential information which Helm360 has received from a third party during the time of rendering services to Helm360 or thereafter. At Helm360's request, Customer shall fully cooperate with Helm360 in any and all legal actions taken by Helm360 to protect its rights in the Product and in the Helm360's confidential information. Helm360 and its employees shall not disclose to anyone other than authorized employees of Customer or use for the benefit of Helm360 and its employees or for any entity other than Customer, any information of a confidential nature, including but not limited to, information relating to (1) any material or information in Customer's databases, (2) any of Customer's projects, (3) the technical, commercial or any other affairs of Customer, or (4) any confidential information which Customer has received from a third party during the time of rendering services to Customer or thereafter.

### **4 Indemnification**

Customer hereby agrees at all times to defend, indemnify and hold harmless Helm360, its affiliates, subsidiary and related companies, licensees, assigns, distributors and associates, and the directors, officers, agents, shareholders, employees, attorneys and licensees of each of them, from and against any and all claims, damages, liabilities, costs and expenses, including without limitation, reasonable attorneys' fees arising out of any breach by Customer of any warranty, covenant, condition or agreement made or to be performed by Customer under the terms of this Agreement, or on account of any wrongful act by Customer or its agents or employees. Any such indemnitee shall have the right, at its option and at its own expense, to retain independent counsel and to participate in any such defense. Helm360 hereby agrees at all times to defend, indemnify and hold harmless Customer, its affiliates, subsidiary and related companies, licensees, assigns, distributors and associates, and the directors, officers, agents, shareholders, employees, attorneys and licensees of each of them, from and against any and all claims, damages, liabilities, costs and expenses, including without limitation, reasonable attorneys' fees arising out of any breach by Helm360 of any warranty, covenant, condition or agreement made or to be performed by Helm360 under the terms of this Agreement and any claim that Customer's use of the Product in accordance with the terms of this Agreement infringes upon the intellectual property rights of any third party. Any such indemnitee shall have the right, at its option and at its own expense, to retain independent counsel and to participate in any such defense.

### **5 Limitation of Liability**

Except as otherwise expressly mentioned in this Agreement, Customer acknowledges that the Product is provided hereunder "as is." Helm360 makes and Customer receives no warranties in connection with the Product, or modifications or improvements thereto, delivered hereunder, express, implied, statutory or in any other provision of this Agreement or communication between Helm360 and Customer. Helm360

specifically disclaims all implied warranties, including warranties of merchantability, and fitness for a particular purpose, or arising from a course of dealing, usage or trade practice. IN NO EVENT SHALL HELM360 BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION OR LOST PROFITS, EVEN IF HELM360 HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

### **5.1 Force Majeure.**

Neither party shall be held responsible or liable for any delay or failure of performance of any part of this Agreement to the extent such delay or failure is caused by or result of acts of nature including earthquake, fire, flood, or other natural disaster, war, invasion, terrorist activities, civil war, labor dispute, strike, lockout, rebellion, revolution, military, government sanction, interruption of failed electricity or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) calendar days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding thirty (30) calendar days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Agreement.

### **5.2 Severability.**

If any provision of this Agreement is, for any reason, held to be invalid or unenforceable and is in a conflict with any statute, law, ordinance, or regulation, the latter, being the statute, law, ordinance, or regulation, shall prevail. In addition, if any provision of this Agreement shall be determined to be invalid in whole or in part by a court, it shall not affect the remaining provisions, which shall remain in full force and effect.

### **5.3 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the Parties, their respective successors and assigns, provided that neither Party may assign any of its rights or delegate or subcontract any of its duties hereunder in whole or in part without the prior written consent of the other party. Notwithstanding the foregoing, Helm360 may assign its rights and duties hereunder to a party acquiring a controlling interest in Helm360.

## **6 GOVERNING LAW**

This Agreement shall be construed in accordance with and governed by the laws of the State of California without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly herefrom shall be litigated only in the courts of the State of California or United States federal courts located therein and the parties hereby consent to the jurisdiction and venue of such courts.

## **7 ALTERNATIVE DISPUTE RESOLUTION**

Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Customer and the Company attempting in good faith to negotiate a resolution thereof; provided, however, that either Customer or the Company may seek injunctive relief

from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows:

- a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then-current Expedited Commercial Arbitration Rules under the American Arbitration Association (“AAA”), each party to bear equally the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration.
- b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation. b. Any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA: except that (i) Provision 20 must govern applicable law and construction, (ii) the locale of any arbitration will be in San Diego, California or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration must be in English, (v) any arbitration award must state the arbitrator’s material findings of fact and conclusions of law, (vi), a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover is reasonable attorney’s fees and costs. Any suite to require arbitration under this agreement, or to enforce judgment upon an arbitration award, may be brought in the state and federal courts of the State of California.

## **8 Termination**

Either party may terminate this Agreement for cause in the event that the other party has materially breached the Agreement and fails to remedy the breach within thirty (30) calendar days of receipt of notice by the non-breaching party, describing the nature of the breach. Termination or expiration of this Agreement shall not affect any accrued rights of either party at the date of such termination, including but not limited to Helm360’s right to recover for breach of ownership and intellectual property rights.

## **9 ENTIRE CONTRACT**

This Agreement sets forth the terms and conditions for the installation, use, test and support of certain of the Product. This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. This Agreement may only be modified by a written document executed by the parties hereto.

## 10 Notices

All notices that may be necessary during the initial term of this Agreement shall be considered sufficient if the notice is in writing and sent by personal delivery, overnight mail, e-mail, or by certified first-class mail addressed to the other party at the address listed below or to such other address as either party hereto shall subsequently supply to the other in writing for that specific purpose. The address of the Company is set forth below:

**Helm360**

Attn: Legal Department  
13475 Danielson St., Suite 220  
Poway, CA 92064  
[legal@helm360.com](mailto:legal@helm360.com)