



## Software Subscription Agreement

BEFORE YOU USE THE SOFTWARE SUBJECT TO THIS SUBSCRIPTION AGREEMENT (THE "AGREEMENT"), PLEASE READ THIS DOCUMENT CAREFULLY. THIS IS A LEGAL AGREEMENT BETWEEN HAZARD SCOUT, LLC, d/b/a iScout ("OUR", "US", or "WE") AND YOU AS THE CUSTOMER ("YOU", "YOUR" OR "YOURSELF"), WHICH GOVERNS YOUR USE OF OUR SAFETY MANAGEMENT SYSTEM SOFTWARE.

WARNING: OUR SAFETY MANAGEMENT SYSTEM SOFTWARE, KNOWN AS "iScout" (THE "SOFTWARE") IS PROTECTED BY COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION OF THE SOFTWARE, OR ANY PORTION OF IT, MAY RESULT IN SEVERE CIVIL AND CRIMINAL PENALTIES, AND WILL BE PROSECUTED TO THE MAXIMUM EXTENT POSSIBLE UNDER THE LAW. THE SOFTWARE IS LICENSED, NOT SOLD.

### 1. Purchased Software and Payment Terms.

A. As long as you are our customer and pay the monthly fee as required by this Agreement, we grant you a non-exclusive, non-transferable, and limited right to use the Software, subject to the restrictions set forth in this Agreement and any other restrictions communicated by us in writing. The term of this Agreement is month-to-month. Fees for the Software will be pro-rated on a per diem basis if the first month of this Agreement is a partial calendar month.

B. The specific Software you will receive and the corresponding payment due for the Software is set forth on the Fee Schedule, attached to this Agreement as Exhibit A (the "Fee Schedule"). We may update or amend the Fee Schedule upon thirty (30) days' prior written notice to you. If we provide dedicated or customized support services to you which are beyond the scope of the initial set up, you agree to pay for those services based on the amounts set forth in the Fee Schedule. In addition to other amounts payable under this Agreement, you agree to pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed

on your use of the Software or the payment of any fees to us, other than taxes assessed against our net income. Such taxes, duties, fees, withholding, or other charges shall be paid by you or you shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If we are required to pay any such tax, duty, fee, or charge, or you are required to withhold any amount from monies due to us pursuant to this Agreement, you shall promptly reimburse us any such amounts.

C. On or about the fifth day of each month, we will automatically draft all fees you owe by way of automated clearing house (ACH) transfer or similar electronic funds transfer, from the following account or credit card, or such other account as you direct in writing:

Account Name: \_\_\_\_\_  
Bank: \_\_\_\_\_  
Routing No.: \_\_\_\_\_  
Account No.: \_\_\_\_\_

Credit Card Type:    MasterCard    Visa    Discover    American Express  
Credit Card Number: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
Security Code: \_\_\_\_\_

**\*Note: 3% charge applies for credit cards**

Projected User Count: \_\_\_\_\_  
Billing Contact Name: \_\_\_\_\_  
Billing Contact Phone: \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
Billing Email: \_\_\_\_\_

Fees due for any partial month at the beginning or at the end of the term of this Agreement shall be prorated based on the number of days during which the term of this Agreement shall have been in effect.

D. At the end of each month, your subscription will automatically renew unless terminated as set forth in this Agreement.

E. If we do not receive the full amount of your fees within fifteen (15) days of the date due, we may immediately suspend your Software upon twenty-four (24) hours' prior notice, which notice may be given by way of email. Such suspension of your Software shall remain in effect until we either receive full payment or terminate the Agreement upon immediate written notice. We also reserve the right to assess a late payment charge of 1.5% per month, if fees are not paid when due.

F. You agree to pay us all reasonable attorney's fees and costs incurred by us to collect any past due amounts. Your account will be deactivated if payment is past due, regardless of the dollar amount. You agree to pay any outstanding balance in full within 30 days of cancellation or termination of the Software.

## **2. Service Use and Limitations.**

You agree to use the Software only through our website and the Software application. We will make reasonable efforts to keep the Software operational 24 hours per day and 7 days per week, except for: (i) planned downtime (of which we will provide at least 8 hours prior notice); or (ii) any unavailability caused by circumstances beyond our control, including but not limited to, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems or Internet service provider failures or delays.

## **3. Ownership.**

Subject to the limited rights expressly granted hereunder, we reserve all rights, title, ownership, and interest in and to the Software, including all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein. You agree not to: (i) reproduce, duplicate, copy, reverse engineer, lease, loan, sub-license, distribute, transfer, sell, resell, exploit, use or access any portion of the Software, or corresponding visual design elements, or attempt any of the foregoing, without our express written consent, (ii) make the Software available to any person other than authorized users hereunder, (iii) modify or create derivative works based upon the Software, (iv) access the Software or use related documentation in order to build a similar product or competitive product, or (v) permit or allow third parties do to any of the foregoing

activities. We shall own all right, title and interest in and to the Software, Software, and other deliverables provided under this Agreement, including all modifications, improvements, upgrades, derivative works and feedback related thereto and intellectual property rights associated therewith. You agree to assign all right, title and interest you may have in the foregoing to us.

#### **4. Termination.**

Either party may terminate this Agreement upon thirty (30) days' prior written notice. We may terminate this Agreement, at any time, without notice to you, if we believe, in our sole judgment, that you have breached or may breach any term or condition of this Agreement. You agree that any termination of this Agreement will not relieve you of any obligation to pay any charges accrued prior to the effective date of such termination. You shall be charged the full amount of the fee for the month in which the effective date of termination occurs. All sections which by their nature should survive the expiration or termination of the Agreement shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

#### **5. Limitation of Liability.**

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OF THE PARTIES SET OUT HEREIN, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY ON ACCOUNT OF ANY CLAIM (WHETHER BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE) FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND/OR DOWN TIME, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR LIABILITY EXCEED AN AMOUNT EQUAL TO THE FEES YOU ACTUALLY PAID TO US UNDER THIS AGREEMENT WITHIN THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE YOU NOTIFY US IN WRITING OF YOUR ALLEGATION THAT WE ARE LIABLE FOR DAMAGES. IF YOU ARE DISSATISFIED WITH THE SOFTWARE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS AND DISCONTINUE USE OF THE SOFTWARE.

#### **6. Warranty.**

THE PERFORMANCE OF THE SOFTWARE MAY VARY DEPENDING ON THE EQUIPMENT WITH WHICH IT IS USED. THE SOFTWARE AND SERVICES ARE PROVIDED "AS-IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE MAKE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SOFTWARE, SUPPORT SERVICES OR ACCURACY, COMPLETENESS, OR SUITABILITY OF ANY OF THE MATERIAL CONTAINED WITHIN THE SOFTWARE AND WE MAKE NO WARRANTY THAT THE SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR COMPATIBLE WITH ANY HARDWARE OR SYSTEMS SOFTWARE CONFIGURATION. YOU BEAR ALL RISK CONCERNING THE SOFTWARE, INCLUDING THE QUALITY AND PERFORMANCE THEREOF.

## **7. Confidentiality.**

You acknowledge the Confidential Information (as hereinafter defined) is a valuable, special, and unique asset of ours and you agree that you will not directly or indirectly disclose, transfer, or use (or seek to induce others to disclose, transfer, or use) any Confidential Information for any purpose other than disclosure to Your authorized employees and agents who are bound to maintain the confidentiality of the Confidential Information. You shall notify us in writing of any circumstances which may constitute unauthorized disclosure, transfer, or use of Confidential Information. You shall use all necessary precautions to protect Confidential Information from unauthorized disclosure, transfer, or use. You shall return all originals and copies of materials containing Confidential Information upon termination of this Agreement for any reason whatsoever. The term "Confidential Information" means any and all of the Software, our trade secrets, our confidential and proprietary information and all of our other information and data not generally known to the public or other third parties who could derive economic value from its use or disclosure, including, but not limited to, the Software. Confidential Information shall be deemed to include technical data, know-how, research, product plans, products, services, customers, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed directly or indirectly in writing, orally or by drawings or observation. We will use all necessary precautions to protect your proprietary information from unauthorized disclosure, transfer, or use.

## **8. Indemnification.**

You agree to defend, indemnify and hold us harmless from and against any and all liability, loss, damage, cost, or expense, including but not limited to attorneys' fees and legal costs, caused by, arising from, or relating to: (a) your use of the Software; (b) fault, negligence, or willful misconduct by you or your users of the Software; (c) claims by your customers, contractors, users, and employees; (d) the misappropriation or use of personal data (as described in Section 11 of this Agreement) by you or your users; and/or (f) your breach of this Agreement.

We agree to defend, indemnify and hold you harmless from and against any and all liability, loss, damage, cost, or and expense, including but not limited to attorneys' fees and legal costs, caused by, arising from, or relating to: (w) any claim by a third party for infringement of its intellectual property rights relating to your authorized use of the Software; (x) our fault, negligence, or willful misconduct; (y) our misappropriation or misuse of personal data (as described in Section 11 of this Agreement; and/or (z) our breach of this Agreement.

## **9. Governing Law.**

This Agreement will be governed and construed in accordance with the laws of the State of Oklahoma without regard to its rules governing conflicts of law. Any action arising under or relating to this Agreement or any dispute with us must be commenced and maintained in the federal or state courts as applicable in Oklahoma County, Oklahoma.

## **10. Logo Usage.**

We may request your written permission to use and display your company logo, service marks, and related symbols on our website, advertising, and promotional materials. If you consent to such use and display, we will comply with any written instructions and formats you submit prior to our use. Your logo, service marks, and related symbols shall remain your sole and exclusive property.

## **11. Customer Data**

You hereby acknowledge and agree that our performance under this Agreement may require us to process, transmit and/or store your personal data or the personal data of your employees or affiliates. By submitting personal data to us, you agree that we and our affiliates may process, transmit and/or store personal data to the extent necessary to enable us to perform our

obligations under this Agreement. You hereby grant to us a non-exclusive license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate, all such personal data to the extent reasonably required for the performance of our obligations and the exercise of the our rights under this Agreement, together with the right to sub-license these rights to our hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of our obligations and the exercise of our rights under this Agreement. You warrant to us that such personal data or the use of such personal data by us will not breach the provisions of any law, statute, or regulation, infringe the intellectual property rights or other legal rights of any person, or give rise to any cause of action against us.

Notwithstanding anything in this Agreement to the contrary, our Terms of Use and Privacy Policy, each posted on our website, are incorporated herein by reference and all the terms and obligations contained in those agreements are binding upon you, whether or not you access our website. You hereby acknowledge and agree that you have read each of these agreements prior to executing this Agreement and you hereby agree to such terms. In the event there is a conflict between the terms of this Subscription Agreement and the terms of the Privacy Policy or Terms of Use, the terms of this Subscription Agreement shall govern and control.

## **12. Miscellaneous.**

This Agreement, along with any written terms, conditions, or policies we implement concerning the Software constitute the entire agreement between the parties relating to the Software and supersede all prior or contemporaneous oral or written communications with respect to its subject matter. No modification to this Agreement will be binding, unless in writing and signed by a duly authorized representative of the parties. The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party shall have the power to obligate or bind the other party. The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach of this Agreement. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement will not be affected and each such term or provision of this Agreement shall continue to be valid, binding and enforceable to the fullest extent permitted by law. Nothing in this Agreement shall prohibit us from furnishing the Software to others, including your competitors.

You agree to notify your employees, agents, and representatives of the terms of this Agreement and you are responsible for their full compliance. This Agreement may only be assigned by you with our written consent. This Agreement shall be binding upon both parties' successors, heirs, legal representatives, and permitted assigns.





## EXHIBIT A – Fee Schedule

# of Active Profiles	Monthly Cost Per Active Profile	Initial Set Up Fee	Set Up Support Hours
Up to 10	\$10.00*	\$1,000.00	5 hours
11-25	\$9.50		
26-50	\$9.00	\$1,500.00	7.5 hours
51-100	\$8.00		
101-250	\$6.00	\$2,000.00	10 hours
251-500	\$4.00		
501-1000	\$2.50	\$3,000.00	15 hours
1001-2500	\$1.50		
2501+	\$0.75	\$5,000.00	25 hours

\*\$99 minimum monthly cost for up to 10 active profiles

### Monthly fee structure example:

<b>100 Active Profiles</b>	10 profiles x \$10 = \$100
	15 profiles x \$9.50 = \$142.50
	25 profiles x \$9 = \$225
	50 profiles x 8 = \$400
	TOTAL = \$867.50 monthly

**\*Add-ons:** Additional fees will apply to any bonus features, content, and other add-ons (e.g., 2020 Training, driver qualification, etc.) you request, and will be assessed at our standard rates.

- 2020 Training \$3/profile/month
- Driver Qualifications \$2/regulated driver/month

### \*\*Dedicated/Customized Support Services

Utilized for virtual training, data upload, report creation, or other dedicated or customized support services requested.

- Additional virtual dedicated support \$80/hour
- Onsite training \$100/hour plus travel
- Custom software development \$150/hour