

END USER LICENSE AGREEMENT - KUBEHA

Terms of Service

HIGH AVAILABILITY SOLUTIONS, AND ITS AFFILIATE(S) (“**HAS**”) IS WILLING TO LICENSE HAS’S PROPRIETARY SAAS SOFTWARE, PRODUCTS, AND ITS OTHER SERVICES (E.G., KUBEHA AND OTHER SERVICES) ASSOCIATED WITH THE REGISTERING, ACCESS, OR OTHER USE THE SOFTWARE, PRODUCTS, AND NETWORK SERVICES PROVIDED TO YOU BY “HAS” UNDER THIS END USER LICENSE AGREEMENT (“**LICENSED SOFTWARE**” AND “**EULA**”) AND THE ACCOMPANYING DOCUMENTATION, INCLUDING WITHOUT LIMITATION, SUPPORT FILES, AND SUPPORTING UTILITIES (“**DOCUMENTATIONS**”) TO YOU (HEREINAFTER REFERRED TO AS “**YOU**”, “**YOUR**” OR “**LICENSEE**”) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THIS EULA. IF YOU ARE ENTERING INTO THIS EULA ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“**ORGANIZATION**”), YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE ORGANIZATION TO THIS EULA, IN WHICH CASE “**YOU**” WILL MEAN THE ORGANIZATION YOU REPRESENT. IMPORTANT: READ THE FOLLOWING TERMS AND CONDITIONS BEFORE ACCESSING OR USING THE LICENSED SOFTWARE, NETWORK SERVICES, OR OTHER SERVICES PROVIDED BY “HAS” UNDER THIS EULA. BY CLICKING “**ACCEPT**”, BY ACCESS TO, OR OTHERWISE USING THIS LICENSED SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, “HAS” IS NOT WILLING TO LICENSE THE LICENSED SOFTWARE TO YOU AND YOU MAY NOT USE THE LICENSED SOFTWARE. FOR CLARITY, THE LICENSED SOFTWARE, AND ANY INTERACTION OR INTERFACE OF THE LICENSED SOFTWARE WITH OTHER PRODUCTS AND SERVICES, IS SUBJECT TO THIS EULA. IN ADDITION, THIS EULA DOES NOT AFFECT OR GOVERN OTHER PRODUCTS AND SERVICES WHICH ARE LICENSED BY “HAS” UNDER OTHER TERMS, INCLUDING OPEN SOURCE LICENSES.

NOW, THEREFORE, in consideration of the obligations made and undertaken, the parties covenant and agree as follows:

1. Acceptance of Terms

THE “HAS” PROPRIETARY SAAS PLATFORM IS OFFERED TO YOU AS AN INTELLIGENT DEVELOPMENT PLATFORM THAT EXTENDS A TOOLSET AND INTERFACE OF APPLICATIONS AND CLOUD ENVIRONMENTS. APPLICATIONS ON THE PLATFORM ARE OFFERED BY “HAS” FOR THE PURPOSE OF ENABLING ANY USER OF THE PLATFORM TO AUTOMATE RECOVERY STEPS OF ALERTS OF ANY PLATFORM.

BY CHOOSING “I AGREE”, EXECUTING AN ORDER FORM, OR OTHERWISE BY USING THE SERVICES, YOU HEREBY ACCEPT AND AGREE TO BE BOUND BY ALL THE TERMS HEREIN, WHICH ACCEPTANCE DATE SHALL BE DEEMED THE EFFECTIVE DATE OF THIS AGREEMENT.

You represent and warrant that, if entering into this Agreement on behalf of an employer or other legal entity you are representing, you have full authority to bind said employer or other legal entity to this Agreement.

2. Access to the Services

1. **Creating an Account.** In order to use the Services, you have to create an account (“**Account**”). You agree to (i) provide accurate and complete Account and login information; (ii) keep, and ensure that Authorized Users keep, all Account login details and passwords secure at all times; (iii) remain solely responsible for the activity that occurs in your Account including with respect of your Authorized Users; and (iv) promptly notify HAS of any unauthorized access or use of the Account or the Service. HAS will not be liable for any loss that you may incur as a result of unauthorized use of the Account. You will not allow the use and access to the Services by third parties or anyone other than the Authorized Users.
2. **Subscription.** Subject to the terms and conditions of this Agreement (including payment in full of applicable fees), HAS hereby grants you a limited, revocable (pursuant to Section 10.2), personal, non-transferable, non-assignable, non-exclusive, non-sublicensable right to access and use the Services, solely for internal business purposes, all in accordance with the license scope and subscription term set forth under the Order Form. If you wish to add Authorized Users or increase the scope of use in your license metrics, you may request to make such changes to your subscription package which changes will become applicable upon the execution of a change order for the remainder of your subscription term.
3. **Evaluation and Free Services.** We may offer, from time to time, part or all of our Services on a no-obligation evaluation version or otherwise as a free limited version of the Services (“**Evaluation Service**” and “**Free Services**”, respectively). HAS reserves the right to modify, cancel and/or limit Evaluation Services or Free Services at any time and without liability to you. HAS will use reasonable efforts to provide you an opportunity to export your Content upon termination of your Account or access to the Evaluation Services or Free Services, however you are solely responsible for ensuring proper backup and data retention and we will not be responsible for any loss of information. The Evaluation Service and Free Services are governed by this Agreement, provided that notwithstanding anything to the contrary (i) such services are licensed hereunder on as “AS-IS”, “AS AVAILABLE” basis, with no warranties, express or implied, of any kind; and (ii) IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF HAS AND ITS AFFILIATES UNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT EXCEED US\$10.
4. **Restrictions on Use.** The Services shall be accessed in accordance with their intended purpose and as detailed in the HAS website, documentation, or by any other written instructions of HAS provided to you. Except as expressly permitted by this Agreement, you may not, nor permit anyone else to, directly or indirectly: (i) copy, modify, translate, create derivative works of the Services; (ii) decompile, reverse engineer or disassemble the Services and/or any components thereof or otherwise attempt to obtain or have access to the source code for the Services; (iii) give, sell, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Services to any third party, including, but not limited to your Affiliates, or use the Services in any service bureau arrangement; (iv) circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Services; (v) use any robot, spider, scraper, or other automated means to access the Services for any purpose; (vi) transmit or upload any viruses, spyware or other harmful, infringing or illegal content; (vii) use the Services to develop a competing service or product, and any use by a competitor of HAS shall be prohibited; (viii) export or re-export the Services or underlying information or technology (a) into (or to

a national or resident of) Cuba, Iraq, Libya, North Korea, Lebanon, Iran, Syria or any other country to which the U.S. and/or Israel has embargoed goods and services; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders and/or (ix) use the Services in any unlawful manner or in breach of this Agreement. Any right not explicitly granted to you is reserved to HAS or its licensors.

3. Changes to Services

We may add, enhance, upgrade, modify or discontinue any functionality, feature or tool available through the Services in our discretion without further notice. If HAS makes any material adverse change in the core functionality of the Services, then HAS will notify you by posting an announcement on the HAS website or via the Services or by sending you an email in accordance with the details provided in your Account.

4. Support and Maintenance

HAS offers maintenance and support services to you as part of its Services. Subject to payment of applicable fees, HAS will maintain and support the Services in accordance with its standard Service Level Agreement, as amended from time to time, which may be provided to you upon request (the “SLA”). Please note that different service levels may apply to different subscription packages available as part of the Services.

5. Warranties

1. **Mutual Warranties.** Each Party hereby represents, warrants and as applicable covenants to the other Party that: (a) it has the full right, power and authority to enter into this Agreement; (b) when executed by both Parties, this Agreement will be a valid and binding obligation of such Party; and (c) it has obtained and will maintain throughout the term of this Agreement all necessary licenses, authorizations, approvals and consents to enter into and perform its obligations hereunder in compliance with all applicable laws, regulations and rules; and (d) it is under no contractual or other restrictions or obligations which are inconsistent with the execution of this Agreement, or which will interfere with the performance of the Services.
2. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED WITHOUT ANY OTHER WARRANTY. HAS EXPRESSLY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INTERFERENCE, SECURITY, FITNESS

FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. THE ENTIRE RISK ARISING OUT OF THE USE OF THE SERVICES REMAINS WITH YOU. HAS DOES NOT WARRANT THAT THE ACCESS TO AND USE OF SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ERRORS ARE REPRODUCIBLE OR THAT ERRORS ARE REPAIRABLE AND DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES INCLUDING WITHOUT LIMITATION IN TERMS OF THEIR CORRECTNESS, USEFULNESS, ACCURACY, RELIABILITY, OR OTHERWISE. HAS WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO PUBLIC NETWORKS, HOSTING PROVIDERS OR OTHER THIRD-PARTY INFRASTRUCTURE PROVIDERS.

6. Fees and Payment

1. Fees. You will pay HAS the service and support fees for the licensing package, as either set forth in HAS's then in-effect price list found on the HAS website; or (ii) if you have executed an Order Form, then in accordance with those fees stated in the Order Form (the "Fee"). You are responsible to provide HAS with valid and updated credit card information and you hereby authorize HAS to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s). If the Order Form specifies that payment will be by a method other than a credit card, HAS will invoice you in advance and otherwise in accordance with the relevant Order Form. You are responsible for providing complete and accurate billing and contact information to HAS and notifying HAS of any changes to such information. All subscriptions shall be subject to the applicable usage limits; if you exceed any of your usage limits, HAS shall be entitled to either seek to reduce your usage to conform to the agreed upon limit or automatically charge for the exceeding usage which amounts shall be charged to any subsequent invoice issued by HAS. All fees are non-refundable and non-cancellable (NR/NC). Please note that separate terms and conditions of third-party payment processors may apply to the payment of any applicable Fees.
2. Billing. Unless specified otherwise in an Order Form, (i) you will be invoiced for the Fees upon execution of this Agreement and prior to any renewal of the Services; and (ii) payment shall be made within thirty (30) days after the of issuance of the applicable invoice, and (c) all amount payable hereunder shall be paid in United States Dollars. All amounts not paid on the due date shall bear interest at the rate of one percent (1.5%) per month and in any case no more than 10% in the aggregate, or at the highest rate allowed by law, whichever is less.
3. Taxes. Prices are exclusive of all taxes of any nature. You will responsible to pay all applicable taxes, including all sales, use, value added, withholding or other taxes and fees, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, except for taxes based on HAS's net income.

7. Content and Applications

1. Use Content and Apps. Subject to Section 8.1, you retain all rights to: (i) any and all content, data and information that you upload to the Services, including any files, documents, images, text, recordings, chat logs, transcripts, and similar data (collectively, the “**Content**”); and (ii) any applications and software consisting of add-ons, features, use cases, and extensions developed by you through use of the Services (“**Apps**”).
2. Permission to Use Content. You hereby grant us a worldwide, royalty-free, limited license to access, use, process, copy, distribute, perform, export, and display the Content for purpose of providing the Services to you, and solely to the extent that reformatting Content for the purpose of developing Apps constitutes a modification or derivative work, the foregoing license also includes the right to make modifications and derivative works.
3. Permission to Use Apps. In order to enable the Services, you hereby agree to grant HAS a worldwide, perpetual, irrevocable, royalty-free, sublicensable, unrestricted license to use, copy, host, store, display, reproduce, modify, adapt, edit, translate and create derivative works of the Apps as part of the Services and offer the capabilities of the Apps to other users of the Services. The distribution of the App as part of the Services shall exclude any disclosure of your Confidential Information.
4. Responsibility for Content. You warrant that (i) you have the right to upload or otherwise share your Content with HAS and that you have obtained all necessary consents under any applicable laws, (ii) the Content is in compliance with any applicable laws and regulations; (iii) the Content does not infringe on any rights of any third party, including intellectual property rights; and (iv) your Content is free of viruses, trojans, time-bombs and any other malicious code. HAS assumes no responsibility or liability for Content, and you shall be solely responsible for Content and the consequences of using, disclosing, storing, or transmitting it.

8. Intellectual Property Rights

1. HAS IP. All right, title and interest in and to the Services, including without limitation any underlying data, software, design, UI, information, texts, files, "look and feel", features, any new version releases, enhancements, modifications, improvements, derivative works thereof and Feedback, and all Intellectual Property Rights therein, are and shall remain solely owned by HAS or their respective licensors (“**HAS IPR**”).
2. Feedback. You may provide HAS with feedback regarding the Services, including without limitation suggestions, ideas, bug notes and user experience testimonies (collectively, “**Feedback**”). Feedback shall not include your Confidential Information. HAS may, in connection with any of its services, use, copy, disclose and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise and you hereby assign all right, title and interest in and to all Feedback to HAS upon creation thereof.
3. Usage Data. Usage Data includes aggregate, analytical or statistical data which is derived, created or learned from the use of the Services (“**Usage Data**”). Notwithstanding anything to the contrary, HAS may collect and use Usage Data to develop, improve, support, and operate its products and services, all provided such Usage Data has been aggregated and anonymized such that you, your Authorized Users or your end users cannot be identified.

4. Third Party Components. The Services include third party software components that are subject to open source licenses or pass through commercial licenses (“**Third Party Components**”, and “**Third Party Terms**”, respectively). Some of the Third Party Software Terms may be made available to you through the Services, its documentation or via a supplementary list provided by HAS. Any covenants, representations, warranties, indemnities and other commitments with respect to the Services in this Agreement are made by HAS and not by any authors or suppliers of, or contributors to such Third Party Components. Any use of Third Party Components is subject solely to the rights and obligations under the applicable Third Party Terms. If there is a conflict between any Third Party Terms and the terms of this Agreement, then the Third Party Terms shall prevail but solely in connection with the related Third Party Components. Notwithstanding anything in this Agreement to the contrary, HAS does not make any representation, warranty, guarantee, or condition, and does not undertake any liability or obligation, with respect to any Third Party Components.
5. Processing of Personal Data. As may be applicable, HAS shall process, retain and use any personal data provided by you for the purpose of provision of the Services. Any use of personal data which is required for the provision of the Services shall be subject to the Data Processing Agreement which is attached hereto as Exhibit B (the “**DPA**”). You hereby warrant that you have provided any appropriate notices and have collected all proper consents with respect of the collection and transfer of personal data to HAS under this Agreement. HAS shall be deemed to be the processor of personal data on your behalf and you shall be deemed the controller and owner of such personal data.

9. Confidentiality

1. Non-Disclosure; Restrictions on Use. During the Term of this Agreement, either party may disclose (a “**Disclosing Party**”) to the other party (a “**Recipient**”) certain Confidential Information. Recipient agrees not to use the Confidential Information of the Disclosing Party for any purposes except as necessary to fulfill its obligations under this Agreement. Recipient agrees not to disclose the Confidential Information of the Disclosing Party except to those of its employees, contractors or agents who have a need to know the Confidential Information in order to fulfill Recipient’s obligations under this Agreement, and where such personnel shall be bound by written agreements containing confidentiality obligations not less protective than herein, all provided Recipient remains liable for any act or omission of its personnel in breach of this Agreement.
2. Standard of Care. Recipient agrees that it shall treat the Disclosing Party’s Confidential Information with the same degree of care as it accords to its own Confidential Information; provided that in doing so, in no event shall Recipient exercise less than reasonable care. Recipient agrees to advise the Disclosing Party in writing of any misappropriation or misuse by any person of the Disclosing Party’s Confidential Information of which Recipient may become aware.
3. Compelled Disclosure. Recipient may disclose the Disclosing Party’s Confidential Information to the extent required by a valid order by a court or other governmental body or by applicable law; provided, however, that Recipient will use all reasonable efforts to minimize such disclosure to the minimum extent possible, and provided further, that Recipient shall promptly notify Disclosing Party of the obligation to make such disclosure upon receiving any such requirement so that Disclosing Party will have a reasonable opportunity to object to such disclosure.

4. Return of Materials. Upon termination or expiration of this Agreement, any materials or Confidential Information of Disclosing Party which are furnished to Recipient, and all copies thereof, at the Disclosing Party's option, will either be: (i) promptly returned to the Disclosing Party; or (ii) destroyed by Recipient (with Recipient providing written certification of such destruction).
5. Remedies. Recipient acknowledges and agrees that the Disclosing Party shall be entitled to seek appropriate equitable relief in any competent jurisdiction without obligation of proving damages or posting bond in the event of any actual, threatened, or intended breach of this Agreement by Recipient. Such remedies shall be in addition to all other remedies available at law or in equity.

10. Term and Termination

1. Term. The term of this Agreement shall commence on the Effective Date and will continue for a period of the subscription period for each of the Evaluation, Free Services or Services, as specified in the HAS website, online interface or Order Form, as applicable (the "**Initial Term**"), The Initial Term of the Services shall be automatically renewed for the equivalent period of the initial subscription unless otherwise stated in the Order Form (each, a "**Renewal Term**" and together with the Initial Term, the **Term**"). Either party may provide a notice of non-renewal of the Renewal Term no less than thirty (30) days prior to the then in-effect Initial or Renewal Term. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior subscription term may result in re-pricing at renewal.
2. *Termination. A party may terminate this Agreement: (i) upon the other party's material breach that is not cured within thirty (30) days after receiving written notice of such breach; or (ii) upon providing written notice in the event that one or more of the following events occur(s): (a) appointment of a trustee or receiver for all or any part of the assets of the other party; (b) insolvency or bankruptcy of the other party; (c) a general assignment by the other party for the benefit of creditor(s); or (d) dissolution or liquidation of the other party. In addition, HAS reserves the right at any time, in its sole discretion, to change, limit or suspend your access to your Account without prior notice, as may be necessary due to any breach of this Agreement, a change to HAS's business (i.e. eliminating the Services), any perceived risk to the Services or other users of the Services, or other lawful reason.*
3. Effect of Termination. Upon termination of this Agreement, (i) all licenses granted under this Agreement shall expire, and y will cease providing the Services; (ii) each party shall return any copies of Confidential Information to the Discloser, provided however, that any of your Content may be immediately deleted by HAS upon termination of this Agreement; and (iii) any outstanding Fees shall become immediately due and payable on the date of termination of the Agreement. If the Agreement is terminated by you for the material breach of HAS then you will be entitled to a refund of the unused pre-paid annual subscription amount calculated from the date of notice of termination for material breach issued by you. Those provisions of this Agreement which by their nature should survive the expiration or termination of this Agreement shall so survive its expiration or termination, including without limitation, Sections 5.2, 6.2, 7.3, 8, 9, 10.3, 11-12 and 13.3.

11. Limitation of Liability

1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HAS OR ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE, MALFUNCTION, FIRE, ELECTRICAL FAILURE OR SHORT CIRCUIT), OR LOSS OF PROFITS OR DATA OR ANY OTHER DAMAGES, COSTS OR LOSSES ARISING OUT OF THIS AGREEMENT, EVEN IF HAS OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF HAS AND/OR ITS LICENSORS, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID TO HAS HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM THAT GAVE RISE TO DAMAGES. WITH RESPECT OF BREACH OF THE DPA, THE AGGREGATE LIABILITY OF HAS AND/OR ITS LICENSORS SHALL BE LIMITED TO TWICE (X2) THE AMOUNT ACTUALLY PAID TO HAS DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM THAT GAVE RISE TO DAMAGES. NOTWITHSTANDING THE FOREGOING, THE FOREGOING LIMITATION SHALL NOT APPLY WITH RESPECT TO WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS.

12. Indemnification

1. Indemnification by you. You shall defend, indemnify and hold harmless HAS, its officers, directors, employees, Affiliates and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from the your unauthorized use of the Services or breach of your warranties with respect to Content.
2. Indemnification by HAS. HAS agrees to defend, indemnify and hold harmless Licensee from and against any damages finally awarded in judgement or settlement against any losses, damages or liability (including reasonable attorney's expenses) borne by you as arising from a third-party claim alleging that the use of the Services, when used in accordance with this Agreement, infringes the Intellectual Property Rights of such third party. Notwithstanding the foregoing, HAS will have no responsibility for claims to the extent arising from (i) Apps or Content; (ii) unauthorized modifications of any portion of the Services not made by HAS or anyone on its behalf; (iii) unauthorized combination or use of any portion of the Services with products not contemplated herein; or (iv) the use or distribution of the Services not in compliance with the HAS documentation or the provisions of this Agreement.
3. Procedure. As a condition to the obligations under this Section 7, the indemnitee shall (i) notify indemnifying party promptly in writing of such claim; and (ii) grant indemnifying party sole control and authority to handle the defense or settlement of any such claim and will provide all reasonable information and assistance in connection with the foregoing, all at indemnifying party' expense.

4. This section 12 states HAS's sole and exclusive liability and remedy for any claims of intellectual property infringement.

13. Miscellaneous

1. **Modifications.** We reserve the right, at our discretion, to change this Agreement at any time. Such change will be effective ten (10) days following our sending a notice thereof to you or posting the revised Agreement on the HAS website, and your continued use of the Service thereafter means that you accept those changes.
2. **Publicity.** HAS may use your name and logo as a user of the Services on its website, press releases, and other marketing materials and presentations, provided that HAS shall obtain your written consent.
3. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of California, U.S. or Delhi, India, without regard to that state's conflicts of laws rules. All disputes arising under or relating to this Agreement shall be resolved exclusively in the appropriate court sitting in New Jersey, US or Delhi, India.
4. **Assignment.** Neither party may assign or otherwise transfer its rights or obligations under this Agreement without the prior consent of the other party, provided that either party may assign or otherwise transfer its rights or obligations herein to an Affiliate or in the event of transfer to a person or entity who directly or indirectly acquires all or substantially all of the assets or business of such party, whether by change of control, sale, merger or otherwise, without consent. Any prohibited assignment, transfer or sublicense shall be null and void.
5. **Entire Agreement.** This Agreement and any exhibits hereto set forth the entire agreement and understanding between the parties. For the sake of clarity, these terms and conditions shall not apply to licensees who have licensed the Services through, and signed an end user license agreement with, a reseller or partner authorized by HAS to resell subscriptions to the Software, so long as such end user license agreement complies substantially with the terms and conditions of this Agreement. In such cases, you are granted a license in the Services by and through the reseller and not directly by HAS.
6. **No Waiver.** The failure of any party at any time to require performance of any provision of this Agreement shall in no manner affect the right of such party at a later time to enforce the same. No waiver by any party of any condition or of any breach of any term contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of any breach of any such term or any other term set forth in this Agreement.
7. **Severability.** If any provision of this Agreement is unenforceable for any reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions contained in this Agreement invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any portion of this Agreement shall not affect the remaining portions of this Agreement.
8. **Force Majeure.** HAS will not be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including without limitation, natural disasters, acts of civil or military authority, fire, flood, war, labor

shortage or dispute, public health emergencies, pandemic or governmental authority.

9. Partners. Notwithstanding anything to the contrary, this Agreement shall not apply with respect of any of HAS's partners, resellers, managed service providers operating through its partner program. Any such partners shall be subject to the applicable partner agreement governing its engagement with HAS, which shall have precedence over this Agreement in any case of conflict or inconsistency.

14. Definitions

All capitalized terms used herein shall have the meanings set forth below:

1. "**Affiliate**" shall mean any entity that Controls, is Controlled by, or is under common Control with you, provided that such an affiliate is not a competitor of HAS. "**Control**" shall mean the ownership, directly or indirectly, of 50% or more of the voting interest.
2. "**Authorized Users**" means your employees whose duties require such access or authorized consultants and subcontractors (excluding any competitors of HAS) only where such use is required as part of their performance of the services for you.
3. "**Confidential Information**" means any non-public or proprietary information or materials of Disclosing Party, whether in tangible or intangible form, which will be deemed confidential if they are marked as such or if they should be deemed as such due to the nature of the information or the circumstances of disclosure, including without limitation any technical data, know-how, business, research, products, hardware, software, services, development, inventions, processes, engineering, marketing, techniques, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities. HAS IPR shall be deemed Confidential Information of HAS. Notwithstanding the foregoing, Confidential Information does not include information that Recipient can prove: (i) was in its possession at or prior to the time of disclosure by Disclosing Party; (ii) was generally known in the industry prior to its disclosure or becomes generally known in the industry after its disclosure without any breach of obligations of confidentiality; (iii) is approved for release by written authorization of the Disclosing Party; or (iv) is disclosed to Recipient by a third party not subject to any obligation of confidentiality.
4. "**Intellectual Property Rights**" shall mean any (i) patents and patent applications throughout the world, including all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and re-examinations of any of the foregoing, all whether or not registered or capable of being registered; (ii) common law and statutory trade secrets and all other confidential or proprietary or useful information that has independent value, and all know-how, in each case whether or not reduced to a writing or other tangible form; (iii) all copyrights, whether arising under statutory or common law, whether registered or not; (iv) all trademarks, trade names, corporate names, company names, trade styles, service marks, certification marks, collective marks, logos, and other source of business identifiers, whether registered or not; (v) moral rights in those jurisdictions where such rights are recognized; (vi) any rights in source code, object code, mask works, databases, algorithms, formulae and processes; and/or (vii) all other intellectual property and proprietary rights, and all rights corresponding to the foregoing throughout the world.

5. **“Services”** means the HAS proprietary SaaS platform which extends a toolset and interface of applications and cloud environments, and which enables you to automate your alert recovery steps for your cloud operations. Subscription to the Services may include various subscription plans which include different features, tools or modules, all as set forth under the Order Form.
6. **“Order Form”** means the ordering document the Parties have signed and entered into in respect of subscription to the Services.

[End of End User License Agreement]

Contact Information

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