

# IRES GLOBAL APPLICATION SERVICES AGREEMENT

**THIS APPLICATION SERVICES AGREEMENT** (the "Agreement") is made by and between IRES Global, Inc. ("IRES"), a corporation incorporated in Hong Kong, hereinafter referred to as the "Supplier" and the Customer, as mentioned below.

**1. Parties.** The Supplier has developed software applications and products that it makes available to subscribers via the Internet under this Agreement, and the Customer wishes to use the Supplier's software and services in its business operations. The Customer, hereinafter referred to as "Customer", is any entity that accepts these terms including any employer, agent or person having full legal authority to bind the entity to such terms. These terms are effective as of the date you first click "I Agree" (or similar button or checkbox) or use or access the Haz360™ software, whichever is earlier. Customer indicates its assent to these terms by clicking "I Agree" (or similar button or checkbox) at the time of registration for the Haz360™ software or creation of a account to access the Haz360™ software.

**2. Background.** The Supplier has agreed to provide, and the Customer has agreed to use and pay for the following Software Programs and related Services in its business operations subject to the terms and conditions of this Agreement:

a. Haz360™. Subject to the terms and conditions of this Agreement and in exchange for timely payment of the subscription fee set forth in Schedule A, Supplier hereby grants to Customer, and Customer hereby accepts, a non-exclusive, non-transferable right to permit Authorized Users to access and use the Haz360™ software program (the "Haz360™ Software") via the Supplier's website designated on Schedule A (the "Site") on a per user basis and to use the related Software documentation. A user is a single user on whose behalf Customer has paid applicable subscription fees, and the access and use granted herein is limited to the maximum number of users listed on Schedule A. Customer must pay a subscription fee for each individual user of the Haz360 Software, regardless of whether the individual's use is concurrent with other users or at different times from other users. To increase the number of users beyond the maximum number of users, Customer must purchase additional User subscriptions for each new user at Supplier's then-current subscription fee. If a user is terminated or resigns from employment with the Customer, or is transferred such that he or she no longer requires use the Haz360™ Software, Customer may transfer this license to an alternative user provided that the total number of users does not exceed the maximum number of users.

b. Definitions. The Haz360™ Software documentation shall be referred to throughout as the "Documentation". The Haz360™ Software shall be referred to throughout as the "Software".

c. Updates/Upgrades. None of the Services granted in accordance with this Agreement includes a license to, or any rights in an update or upgrade of the Software.

**3. Customer Responsibilities/Restrictions.** Customer acknowledges and agrees that the Software and related Documentation are highly confidential assets of, and proprietary to, Supplier and are entrusted to Customer under this Agreement for use only in the manner expressly permitted herein. As such, any and all patent, copyright, trademark, trade secret or any other intellectual or proprietary rights protection whatsoever relating to the Software (in any past, current or future form or release whatsoever) shall be, at all times, the sole and exclusive property of Supplier, and Supplier reserves all rights and benefits afforded to Supplier therein. Customer shall comply with all operating instructions, policies and procedures for the Software and Site that are issued by Supplier from time to time. Customer shall be solely responsible for the quality and accuracy of all data or information supplied by Customer, provided to Supplier or used in association with the Products. Customer shall not: (a) lease, use, or make available all or any part of the Software or Documentation in whole or in part, for any reason or purpose, to any third party; (b) use the Software to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (c) post, upload, email, link to, or otherwise transmit any content that contains any viruses, cancel bots, Trojan horses, harmful code, or other computer malware or software program designed to interrupt, destroy or limit the functionality of the Software or the Site or impair others' ability to enjoy the Software or the Site, or the proper functioning of any software or hardware or equipment or materials used in connection with the Site; (d) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or (e) Customer shall not attempt to copy, reverse engineer, decompile, disassemble or otherwise modify the Software in any manner whatsoever, or attempt to do any of the foregoing, without the express prior written consent of IRES, which may be withheld in its sole discretion. The Customer shall use all reasonable efforts to prevent any unauthorized access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify the Supplier.

**4. Training.** If requested by Customer, Supplier will provide training to Customer's personnel in the operation of the Products or any portion of the Products subject to the terms and conditions of a separate agreement. Customer acknowledges and agrees that Supplier has no obligation to provide such training under this Agreement and that

Supplier will provide training as part of a separate agreement, on a Time & Materials, or Fee-for-Service basis at Supplier's then current rates.

**5. Additional User Subscriptions.** The Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in Schedule A and the Supplier shall grant access to the Services and the Documentation to such additional Authorized Users in accordance with the provisions of this agreement. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or disapproval of the request [such approval not to be unreasonably withheld]. If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 2 of Schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

**6. Services.** The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement. The Supplier shall use commercially reasonable endeavors to make the Services available 24 hours a day, seven days a week, except for interruptions by reason of (a) planned maintenance carried out during a scheduled maintenance window and (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavors to give the Customer advanced notice or (c) or downtime beyond Supplier's reasonable control. The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's Software program updates and error corrections as they become available. Telephone and e-mail support services are provided on a fee-for-service basis as detailed in Schedule A.

**7. Customer Data.** The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at <http://www.irescglobal.com> or such other website address as may be notified to the Customer from time to time], as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavors to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up). The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at <http://www.irescglobal.com> or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case: (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf; (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (e) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and (d) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

**8. Third Party Providers.** The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party products, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party product nor the content of any of the third-party website made available via the Services.

**9. Payment.** Customer agrees to make the payments to Supplier in accordance with the Supplier's Invoice. For contracts under a monthly fee of \$500.00, no monthly invoice will be sent, and Customer shall provide to Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides: (a) its credit card details to the Supplier, the Customer hereby authorizes the Supplier to bill such credit card on the Effective Date for

the Subscription Fees payable in respect of the Initial Subscription Term; and on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period; (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period, and the Customer shall pay each invoice within thirty days after the date of such invoice. If Customer fails to make a payment due under this Agreement, such failure shall constitute a material breach of this Agreement, and the Supplier may suspend all performance until Customer's payments are current. If Customer fails to bring all payments current within thirty days after the due date of the first defaulted payment, then Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid. All amounts and fees stated or referred to in this agreement shall be payable in US Dollars; are non-cancellable and non-refundable; are exclusive of taxes, which shall be added to the Supplier's invoice(s) at the appropriate rate. Customer shall pay any and all costs of collection incurred by Supplier, including without limitation, reasonable attorneys' fees.

**10. Supplier's obligations.** The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care. Notwithstanding the foregoing, the Supplier: (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities. This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

**11. Customer's obligations.** The Customer shall: provide the Supplier with: (a) all necessary co-operation in relation to this agreement; and all necessary access to such information as may be required by the Supplier; in order to render the Services, including but not limited to Customer Data, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to its activities under this agreement; (c) ensure that the Authorized Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement; (d) obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services; (e) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

**12. Term/Termination.** This Agreement shall commence on the Effective Date and remain in effect for the period specified in Schedule A and, unless this Agreement is terminated earlier as provided herein, shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless: either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or otherwise terminated in accordance with the provisions of this agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**. If customer wishes, upon notice of termination by said customer, that services rendered by Supplier be ceased immediately, an early termination fee equal to the remainder of the contracted monthly fees will be applied. Supplier may terminate this Agreement in the event that Customer fails to cure a breach of this Agreement within 30 days after receipt of written notice of breach. Upon termination by the Supplier due to material breach, Customer shall within five days of termination return, or destroy at Supplier's discretion, any and all copies of the Documentation. Customer shall certify in writing to Supplier that all such copies have been returned or destroyed. On termination of this agreement for any reason; all services granted under this agreement shall immediately terminate; each party shall make no further use of any intellectual property, documentation and other items (and all copies of them) belonging to the other party; the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

**13. No Warranty.** The Customer acknowledges and agrees that Supplier provides the Services, Site, Software and Documentation "AS IS". SUPPLIER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE SOFTWARE, SITE, PRODUCTS, DOCUMENTATION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, INFORMATIONAL CONTENT, ACCURACY, OR SYSTEM INTEGRATION, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT OF THE SOFTWARE OR PRODUCT OR AGAINST INFRINGEMENT.

**SUPPLIER ALSO MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY THIRD PARTY PRODUCT, HARDWARE OR SOFTWARE PROVIDED BY SUPPLIER, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, NON-INFRINGEMENT, NON-INTERFERENCE, INFORMATIONAL CONTENT, ACCURACY, OR SYSTEM INTEGRATION, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. ANY THIRD PARTY PRODUCT, HARDWARE OR SOFTWARE PROVIDED BY SUPPLIER IS PROVIDED "AS IS".** Supplier shall provide Customer with all original manufacturer warranty documents that are available for any third-party hardware or software upon delivery of such third-party hardware and software.

**14. Limitation of Remedy/Liability. NOTWITHSTANDING ALL OF THE LIMITATIONS OF WARRANTIES SET FORTH ABOVE, IN NO EVENT SHALL SUPPLIER'S LIABILITY TO ANY PARTY INCLUDE CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR ANY OTHER INDIRECT DAMAGES (INCLUDING FOR LOSS OF DATA OR LOST PROFITS) WHATSOEVER, EVEN IF SUPPLIER HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. IN NO EVENT SHALL SUPPLIER'S LIABILITY EXCEED THE TOTAL FEES INITIALLY PAID BY THE CUSTOMER TO SUPPLIER UNDER THIS AGREEMENT.** No action relating to this Agreement or the Software may be instituted by any party more than one (1) year after the event giving rise to such action. Customer shall indemnify, defend and hold Supplier, its affiliates, successors and assigns, harmless from and against any claim, suit, loss, damage or any other liability whatsoever in connection with Customer's use of the Software. **THE ABOVE LIMITATIONS OF BOTH WARRANTIES AND LIABILITY ON THE PART OF SUPPLIER MAY BE LIMITED BY LOCAL LAW. ADDITIONALLY, CUSTOMER MAY HAVE ADDITIONAL RIGHTS WHICH VARY FROM LOCATION TO LOCATION BASED UPON LOCAL LAW.**

**15. Protection and Security.** Customer acknowledges and agrees that the Software and Site are protected by certain security measures that may prevent it from using the Software and Site in a manner that is inconsistent with this Agreement or that may automatically prevent access to the Software and Site after the expiration or termination of this Agreement. Supplier at its own expense, shall have the right at any time to use electronic and other measures to verify that Customer's use of the Software and Site is and has been in compliance with this Agreement. Customer agrees to take all appropriate action to protect Supplier's confidential and proprietary rights in the Software, including all modifications, and documentation which shall remain exclusively the property of Supplier. Supplier shall provide user IDs and passwords to each of Customer's Authorized Users for the purpose of accessing and using the Haz360 Software. The number of user IDs and passwords shall not exceed the number of subscriptions purchased. Customer assumes sole responsibility for use of any user IDs and passwords assigned to Customer's employees and agents. Customer shall not violate or attempt to violate the security of the Software, use any device, software or routine to interfere or attempt to interfere with the proper working of the Software, or take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Customer's failure to comply with the terms of this Section 13 shall constitute a material breach.

**16. Confidentiality.** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that: is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; is independently developed by the receiving party, which independent development can be shown by written evidence; or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer. This clause shall survive termination of this agreement, however arising.

**17. Force majeure.** The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes

(whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**18. Waiver.** A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**19. Severance.** If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**20. Entire agreement.** This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to Software, the Documentation and the terms of this Agreement, and supersedes all other representations, proposals, warranties or any other communications whatsoever, oral or written. Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement. This Agreement and performance hereunder shall be governed by and construed exclusively in accordance with laws of the State of Maryland (excepting Maryland's conflict of law provisions which would operate to defeat application of Maryland substantive law). Each of the parties hereby submits to the exclusive jurisdiction of the state and/or federal courts located within the State of Maryland for any suit, hearing or other legal proceeding of every nature, kind and description whatsoever in the event of any dispute or controversy arising hereunder or relating hereto.

**21. Assignment.** The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

**22. No partnership or agency.** Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**23. General Provisions.** Customer agrees that the terms and conditions set forth in this Agreement are reasonable and necessary for the protection of the Software and Supplier's business interests, that irreparable injury will result to Supplier if Customer breaches any of the terms and conditions of this Agreement, and that in the event of Customer's actual or threatened breach of any such term or condition, Supplier will have no adequate remedy at law. Therefore, notwithstanding the foregoing, Customer agrees that Supplier may take any necessary action to compel specific performance of this Agreement or to enjoin any violation of this Agreement so that the Software is not used in any manner to harm or adversely affect Supplier or the value or proprietary nature of the Software. Nothing in this Agreement shall be construed as prohibiting Supplier from pursuing any other remedies available to it for such breach or threatened breach. Any change to this Agreement shall not be valid unless it is in an express writing signed by both parties. Any notice or other communication required or permitted to be given hereunder shall be effected by first class mail to the Supplier's address printed on the Invoice and Customer's address set forth on page one of this Agreement, or such other address as may be directed in writing by either party.

# **IRES Global, Inc.**

## **SCHEDULE A**

Contact [roger.s@iresglobal.com](mailto:roger.s@iresglobal.com) or  
[Dennis.ngai@iresglobal.com](mailto:Dennis.ngai@iresglobal.com)  
for pricing info