

HELION SOFTWARE LICENSING AGREEMENT (TERMS AND CONDITIONS)

This agreement is a license and is made and entered into by and between Yamhill County, a political subdivision of the State of Oregon, the LICENSED USER, hereinafter called "USER", and Helion Software, Inc., an Oregon corporation, hereinafter called "HELION".

WHEREAS, HELION currently owns the product(s) specified in the agreement (therein referred to as "PRODUCT") with the right to license and distribute the PRODUCT; and

WHEREAS, the USER is an individual, an organization, a corporation, a government entity, or a member of a joint venture who will make lawful use of the PRODUCT in its business activity; and

WHEREAS, the USER desires a license to use the PRODUCT and HELION desires to grant such a license to the USER for the sole purpose of permitting the USER to use the PRODUCT in its business activity and for no other purpose whatsoever;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. PRODUCT

1.1 Licensed PRODUCT(s). This license applies to the PRODUCT(s) owned by HELION.

1.2 Grant of License. For and in consideration of the USER's covenant to make payments under Section 5 and the performance of the other covenants and obligations of the USER hereunder, HELION hereby conveys to USER a non-exclusive, perpetual, irrevocable (except as provided herein) license to the PRODUCT.

2. USE

2.1 Permitted Use; Sublicense. This license is granted for the sole purpose of permitting the USER and its authorized subcontractors to use the PRODUCT in their lawful business activities and for no other purpose whatsoever. HELION hereby acknowledges Homeward Bound Pets, an Oregon non-profit corporation, as an authorized subcontractor of USER and HELION authorizes USER to sublicense the PRODUCT to Homeward Bound and to other authorized subcontractors of USER for the lawful business activities of USER and for no other purpose whatsoever in accordance with the terms and conditions of this agreement.

2.2 Restrictions on Use.

(a) Copies. USER shall not duplicate the PRODUCT except for the following:

1. USER may make backup copies of the PRODUCT for protection purposes as long as the USER agrees not to use the backup copy for any purpose other than to replace original data if lost or damaged.
2. USER may translate the PRODUCT into other formats and/or media. These "reformats" shall be subject to the same restrictions as the PRODUCT under this agreement.
3. USER may install and use any number of copies of this product within the Sheriff's Office. In addition, the USER may install and use any number of copies of this product throughout other client departments in read-only mode.

2.3 Reserved Rights. HELION shall retain all rights, title, and interest in the PRODUCT, including the right to license the PRODUCTS covered by this license to other USERS.

3. MAINTENANCE OF SOFTWARE; ESCROW ACCOUNT

3.1 Updates. Maintenance, support, and upgrades of software programs fall outside this license agreement.

3.2 Escrow Account.

- (a) To assure the continued availability and usefulness of the PRODUCT, HELION agrees to establish and maintain in escrow with an escrow agent: the PRODUCT Software source code, database schemas, user and system documentation, all third party software used within the PRODUCT or distributed with their products as a component of their software, and a current list of supported peripheral devices. Upon USER's request, HELION also agrees to deposit this material into escrow with an escrow agent of USER's choosing, provided that USER covers the expense of securing an additional escrow account.
- (b) HELION agrees that in addition to products in escrow referenced above, HELION will maintain in escrow all PRODUCT software source code, database schemas, user and system documentation that is specific to, specialized, custom or unique to USER.
- (c) HELION shall deliver revisions of the PRODUCT source materials, including source code for the PRODUCT and Software and all associated documentation reflecting such revisions, to the escrow agent as and when corresponding revisions of the object code for the PRODUCT and Software are delivered to USER.

4. TERM

4.1 The term of this agreement shall not be restricted as to time, except as set forth in 4.2 below, and shall commence the date the agreement is executed.

4.2 The term of the license shall expire at such time as the USER discontinues use of the PRODUCT, unless the USER fails to comply with any of the terms and conditions provided herein and fails to cure such non-compliance within thirty (30) days after receipt by certified mail of the breach from HELION, at which time the license shall be revoked. The license shall be revoked by HELION giving written notice of such revocation to the USER.

5. PAYMENT

5.1 Time for Payment. Fifty Percent (50%) of the total cost is due upon signing of this license. The remaining fifty percent (50%) is due 30 days after installation.

5.2 Unpaid Fees. Any fees remaining unpaid more than 30 days after the date they are due shall be subject to an interest charge of 1% per month until paid.

6. DELIVERY

HELION shall deliver the PRODUCT to USER in good working condition.

7. WARRANTY

7.1 Limited Warranty

- (a) HELION shall use its best efforts to ensure that the PRODUCT is delivered free of physical defect.
- (b) HELION owns or has all necessary rights to the PRODUCT and has all necessary rights and authority to grant the rights granted hereunder to USER and to carry out its obligations hereunder.
- (c) HELION warrants that all services that are performed under this agreement will be performed in a professional and workmanlike manner by qualified personnel, and HELION has the required skills and experience to perform such services.
- (d) HELION has taken all commercially reasonable steps to prevent the PRODUCT from containing any computer viruses, Trojan horses, time bombs, cancel bots, or other computer programming routines that are intended to detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information, and (b) for a period of ninety (90) days after the Effective Date ("Warranty Period"), the PRODUCT will operate substantially in accordance with any PRODUCT documentation.
- (e) HELION shall have the sole authority to determine whether the PRODUCT, at the time of delivery, was free of physical defect.
- (f) HELION disclaims any other warranties, express or implied, respecting this agreement or the PRODUCT.

7.2 Remedy

- (a) USER's sole and exclusive remedy for breach of this limited warranty will be to return the PRODUCT within sixty (60) days of receipt.
- (b) HELION shall, at its discretion, retain the returned PRODUCT and refund the fee for the license, or replace the PRODUCT, or repair the PRODUCT and return it to the USER.

8. ASSIGNMENT AND TRANSFER

USER shall not disclose, lease, sell, distribute, make, transfer, or assign the PRODUCT or engage in any other transaction that has the effect of transferring the right of use or part of the PRODUCT without prior written consent of HELION.

9. LIABILITY; INDEMNITY

HELION shall not be liable for any activity involving the PRODUCT with respect to the following:

- (a) Lost profits, lost savings, or any other consequential damages.
- (b) The fitness of the PRODUCT for a particular purpose.
- (c) The installation of the PRODUCT, its use, or the results obtained.
- (d) Any foreseeable or unforeseeable damages.

HELION shall indemnify, defend, and hold harmless USER, and its officers, directors, employees, and agents, from and against any and all claim, action, demand, or suit made or threatened by any third party (collectively, "Claims") and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' fees and expenses incurred in investigation or defense (collectively, "Damages"), to the extent such Claims or Damages arise out of or relate to (a) HELION's breach of or default under any provision of this agreement, or (b) an allegation that the PRODUCT or services provided by HELION hereunder, or USER's use of the same in accordance with this agreement, infringe, misappropriate, or otherwise violate any third party's U.S. intellectual property rights. HELION's indemnity obligation herein shall not extend to any Claims or Damages based on an unauthorized modification, combination, or use of the HELION's Software by USER. USER will promptly notify HELION of any threat, warning, claim, or action against HELION or suppliers, that could have an adverse impact on USER's use of the PRODUCT. If HELION informs USER or USER determines that it must discontinue use of the PRODUCT or any service furnished under this agreement because of an existing or anticipated Claim that the PRODUCT or service infringes, misappropriates, or otherwise violates any intellectual property right of a third party, HELION, at its own expense and in its reasonable discretion, shall either: (a) secure for USER the right to continue using the PRODUCT or service; (b) replace or modify the PRODUCT or service to make it non-infringing; provided, however, that such modification or replacement shall not degrade the operation or performance of the PRODUCT or service; or if HELION determines (a) or (b) to be commercially unreasonable, then (c) terminate this agreement and refund to USER any unamortized portions of the fees paid by USER, based on a straight line amortization over a five-year useful life for the PRODUCT.

10. TERMINATION

10.1 USER Rights. Upon the expiration or revocation of this license, the rights of the USER shall cease.

10.2 Return of the PRODUCT and Copies. The PRODUCT and any copies of the PRODUCT shall be returned to HELION within thirty (30) days from the date this license expires or immediately if revoked.

11. MISCELLANEOUS

11.1 Applicable Law: Venue. This license shall be constructed and interpreted under and pursuant to the laws of the state of Oregon. The parties agree that venue for any action or claim arising out of or in connection with this license shall be in the Circuit Court for Yamhill County, Oregon.

- 11.2 **Invalidity.** If any term or provision of this license or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this license shall be valid and enforced as written to the fullest extent permitted by law.
- 11.3 **Entire Agreement.** This license contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement or promise made by any party hereto, which is not contained herein, shall be binding or valid.
- 11.4 **Authority.** Persons whose signatures appear as "LICENSED USER" on the reverse represent that they are authorized to do so and represent and warrant that this licensing agreement is a legal, valid, and binding obligation and is enforceable in accordance with its terms.
- 11.5 **Attorney Fees.** In the event suit is commenced to enforce this agreement, each party shall pay their own costs of said suit including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals, and in any bankruptcy proceeding or administrative proceeding. In the event any litigation or other action to enforce the terms and conditions hereof is commenced by either Party to enforce this Agreement, such litigation or action will be filed and litigated only in a court of competent jurisdiction located in the State of Oregon. Each Party waives any and all rights to have this action brought in any place other than the State of Oregon.
- 11.6 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one agreement. Facsimile or electronic signatures shall be deemed original signatures

12. TIMELINE

12.1 **Approximately April 1, 2020 – Software Live Date.**

13. SOFTWARE INTEGRATION

- 13.1 HELION, to the best of its ability, shall cooperate with the USER and any other USER vendors to integrate HELION'S software and data with other USER computer systems. HELION will provide database diagrams and assistance with data integration with other systems.
- 13.2 If any programming is required, HELION shall bill USER at our standard hourly rate for those additional services.

License Number: 2019-015

Date: 2/13/2020

Contact Person: Tim Svenson / Emily Williams

Phone: 503/434-7506

Company/Agency: Yamhill County Sheriff's Office

Address: ATTN: Emily Williams
535 NE 5th Street, Room 143
McMinnville, Oregon 97128

Product Description:

- ANIMAL CONTROL**
- Receipting
 - Licensing
 - Web Query

TOTAL SOTWARE COST \$9,500.00

This software license agreement is subject to the terms and conditions described previously. In witness whereof, this license is executed on the data set forth under the parties named. The anniversary date of the license shall be the latter of the dates set forth below.

Helion Software, Inc.

Signature:



Name: Murray Giesbrecht

Title: CEO

Date: 2/13/2020

Licensed User

Signature:



Name: Tim Svenson

Title: Yamhill County Sheriff

Date: 2/13/2020