

**SOFTWARE AS A SERVICE (SaaS) SUBSCRIPTION/RENEWAL FORM**

Customer:	Contacts:
Address:	Phone:
	E-Mail:
<b>Services:</b> (the "Service(s)").	
<p><b>Subscription Fees:</b> Customer will pay <u>\$xx,xxx</u> annually in years 1 through X, payable annually in advance, subject to the terms of Section 4 herein.</p>	<p><b>Service Term:</b> This Agreement's Term is x years, beginning on Month Day, Year and ending on Month Day, Year unless this Agreement ends sooner according to the terms elsewhere in this document.</p> <p>Upon expiration of the initial term of this Agreement, CITY/COUNTY/STATE shall have the ability to renew the term of the Agreement for up to and including three successive additional terms of one year each on terms and conditions mutually agreed upon by CITY/COUNTY/STATE and CONSULTANT.</p>
<b>Service Capacity:</b> Up to <u>xxx annually</u> .	
<p><b>Implementation Services:</b> Company will use commercially reasonable efforts to provide Customers the services as described in the Statement of Work, which is attached as Exhibit E. Customers shall pay Company the Implementation Fee in accordance with the terms herein.</p>	
<p><b>Conditions:</b></p> <ul style="list-style-type: none"> <li>• Subscription cost is applicable from Month Day, Year.</li> <li>• Annual payments for subscription are preferred but monthly payments can be accommodated upon request. Subscriptions are billed at the time of contract execution. Implementation costs are billed upon completion of the implementation.</li> <li>• Renewals for years 2 through 5 will be at the same rates stated and automatic unless the department terminates their subscription in writing 60 days prior to the renewal date.</li> <li>• Genie Hours Technical Support - 10 hours/month (10 hours may be use toward additional configurations). The technical support hours may not be carried over from one month to next.</li> <li>• Customization beyond the 10 Genie Hours in any given monthly period will be charged on T&amp;M basis. (Customization include additional reports, dashboards, UI changes, integrations)</li> <li>• Data migration and integration with other software solutions are not included. Once a detailed scope for instance is defined, we will provide a cost and an implementation plan for each project.</li> <li>• If desired, customer will provide web services for integration of the city's Microsoft AD servers or ADFS to authenticate the city staff users.</li> <li>• The customer will provide access to the web services for connecting to their ESRI instance, if required.</li> <li>• The customer will make available necessary resources for requirements gathering, testing, deployment and training as required by the project plan.</li> <li>• Integration to systems other than contact center system is outside of this proposal's scope and pricing.</li> <li>• 3Di's Engage solutions will provide cloud-based data archival, depending on which option that the customer decides to purchase. As long as the subscription is active, 3Di will continue the storage. The customer will have anytime access to their data and they have the ability and right to download the data for other storage/usage options.</li> </ul>	

- Any costs related to sending text message notifications are not included.

**SOFTWARE AS A SERVICE (SaaS) AGREEMENT**

This SaaS Agreement (“Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 202x (the “Effective Date”) between **3Di, Inc. (DBA 3Di Systems)** with a place of business at **3 Pointe Drive, Suite 307, Brea, CA 92821** (“Company”), and the Customers listed above (“Customers”). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

**3Di, Inc.:**

**Customer:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the Service Level Terms attached hereto as **Exhibit B**. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with the terms set forth in **Exhibit B**.

### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sub-licensable license to use such Software during the Term only in connection with the Services.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations.

2.4 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

2.5 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and No rights or licenses are granted except as expressly set forth herein.

Except for Company's Software and intellectual property, Customer shall own all data and other records and deliverables specific to Customer that are provided, created or maintained pursuant to this Agreement ("Customer Data"). Company shall take reasonable measures to protect, and prevent the loss of Customer Data within Company's custody or control.

2.6 Customer acknowledges and agrees that the Company is not providing any consulting or advisory services to the Customer, legal or otherwise, in connection with the Services or Software or Application.

### 3. PAYMENT OF FEES

3.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

3.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company forty-five (45) days after the mailing date of the invoice. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

#### 4. TERM AND TERMINATION

4.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests in writing termination at least thirty (30) days prior to the end of the then-current term.

4.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice, if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon termination for any reason, Customer shall cease all use of the Software and Application and the Company will make all Customer Data available to Customer for electronic retrieval for a period of 120 days, but thereafter Company shall delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### 5. CONFIDENTIAL INFORMATION

5.1 The Company and the Customer understand and agree that in the performance of this Agreement, each party may have access to or may be exposed to, directly or indirectly, proprietary or confidential information of the other party, including, but not limited to, trade secrets, Web site usage statistics, marketing and business plans, Customer Data and technical information ("Confidential Information").

5.2 Each party agrees that it shall not, during the term of this Agreement and after its termination, use (except as expressly authorized by this Agreement) or disclose Confidential Information of the other party without the prior written consent of the other party, unless the receiving party can prove such Confidential Information (i) was known to the receiving party prior to the Effective Date of this Agreement, or (ii) is or becomes publicly available without breach of this Agreement, or (iii) becomes known to the receiving party after rightful disclosure from a third party not under an obligation of confidentiality; or (iv) was independently developed by the receiving party without the use of the disclosing party's Confidential Information. The receiving party will have the right to disclose Confidential Information without being in breach of this Agreement to the minimum extent necessary to comply with a lawful court order or government regulation, provided that the receiving party provide the disclosing party with advance written notice thereof, and reasonably cooperates with the disclosing party to seek confidential or protective treatment of such Confidential Information. In addition, the receiving party agrees to take all reasonable measures to protect and maintain in confidence the Confidential Information received from the disclosing party. With respect to Confidential Information disclosed by a party under this Agreement, this Section 5 shall supersede any existing agreement

relating to confidential treatment and/or nondisclosure of Confidential Information.

#### 6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### 7. INDEMNITY

Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused

fees for the Service.

## **8. INSURANCE**

When Company signs and delivers this Agreement to Customer, and during this Agreement's Term, Company shall furnish Customer with insurance forms that fully meet the requirements of and contain provisions entirely consistent with all of the "Insurance Requirements," which are attached as "Exhibit D" to this Agreement and are incorporated into it by this reference. This Agreement's insurance provisions: (i) are separate and independent from the indemnification and defense provisions herein; and (ii) do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions.

## **9. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE AMOUNTS SET FORTH IN THE INSURANCE REQUIREMENTS, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10. FORECE MAJEURE**

The Company shall not be liable to the Customer or any other person or entity for any delay or failure in the performance of this Agreement or for loss or damage of any nature whatsoever suffered by such party due to disruption or unavailability of communication facilities, utility or Internet service provider failure, acts of war, acts of vandalism, terrorism, lightning, fire.

## **11. VERIFICATION AND AUDIT**

The Company may, at its expense, audit the Customer's use of the Software and Application, provided that any such audit shall not interfere with the Customer's business activities. The Company shall be permitted to conduct automated audits at its discretion, provided that such automated audits take place without accessing the Customer's internal information technology networks and do not materially interfere with the Customer's use

of the Software and Application. If an audit reveals that the Customer has utilized more users than authorized or otherwise underpaid fees to the Company, the Customer shall pay the Company applicable fees based upon the agreed upon fee schedule.

## **12. INDEPENDENT CONTRACTOR**

The relationship of Parties is solely that of independent contractors. Nothing contained in this Agreement shall be construed to give either party the power to direct or control the activities of the other or constitute either party as the other's partner, joint venture member, co-owner, agent, franchisee or employee.

## **13. COMMERCIAL ITEM**

This Section shall apply if the Customer is part of the United States government, or is otherwise subject to regulations promulgated by the United States government for the procurement of goods and services. The Software and Application are both "commercial items" under FAR §2.101 and consist of "commercial computer software" and "commercial computer software documentation" under FAR §12.212 and DFARS §227-7202. Any use, duplication, or disclosure of the Software or Application or associated documentation by the Customer is governed solely by the terms of this Agreement. Any technical data customarily provided with the Software or Application shall also be governed by the terms of this Agreement pursuant to FAR §12.211. Further, the parties acknowledge that all items or services ordered and delivered under this Agreement are commercial items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, the Company agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212-5(e)(1) (OCT 2003). Further, in the event that the parties negotiate or agree upon a change in the price provided in this Agreement, or should the Company become entitled to an equitable adjustment in the price, the Company shall not be required to comply with the contract cost principles or cost accounting standards of the FAR.

## **14. BILLING**

All fees listed on the SaaS Service Order Form are exclusive of all taxes. The "Service Fees" are billed on an annual basis in advance; and, due upon receipt of invoice. This secures site, servers and resources necessary to begin project. The "Implementation Fees" are billed upon completion of the "Implementation Services" and the start of SaaS Subscription Services. All payments should be made directly to 3Di, Inc. and will not be deemed received until actually received in the Company's offices. The Company's mailing address for all payments is:

3Di, Inc.  
Attention: Accounts Receivable  
3 Pointe Drive, Suite 307  
Brea, CA 92821

effective as of the Effective Date.

**15. MISCELLANEOUS**

This Agreement contains the entire agreement of the parties, and supersedes (i) any and all previous or contemporaneous agreements with respect to the subject matter hereof, whether oral or written and (ii) the End User Agreement contained on the Software and Application. In addition, any purchase orders issued by any entity other than the Company shall be valid only for the purpose of identifying this contract for reference purposes only, and any terms included in such purchase orders are void and shall be of no effect. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by the Customer without the Company's prior written consent, such consent not to be unreasonably withheld. The Company may assign, delegate and/or subcontract any or all of its rights or obligations hereunder. Any attempted assignment in violation of the foregoing shall be null and void. All notices and consents required or permitted to be given under this Agreement shall be in writing to the parties at the addresses designated herein or to such other address as either party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made in the form of a certified letter, confirmed facsimile transmission or acknowledged receipt of electronic mail. Receipt shall be deemed to have occurred: five days following mailing of a certified letter; upon receipt of confirmation of fax; and upon receipt of confirmation of receipt of e-mail. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California, without reference to the conflicts of laws rules or any other rules that would result in the application of a different body of law. If any part of this Agreement shall be held to be void or unenforceable, such part will be treated as severable, leaving valid the remainder of this Agreement notwithstanding the part or parts found to be void or unenforceable. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party, and any such waiver shall only be applicable to the specific instance referenced in such writing. This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one contract. Fax copies of signatures shall also be treated as originals for purposes of this Agreement. The Customer acknowledges and agrees that the Company retains the right at any time to change the features, functionality and look-and-feel of the Software and Application. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof. Any outstanding payment obligation of the Customer, the restrictions and responsibilities provisions of Section 2, and all of Sections 5, 6, 7, 12 and 15, and any other term hereof which contemplates continuing effectiveness, shall survive the termination or expiration of this Agreement for any reason.

**17. SIGNATURES**

**3Di, Inc.** (the "Company"):

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer:**

(the "Customer"):

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**16. ACCEPTANCE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives 6

**EXHIBIT A**

**Service Level Terms**

The Services shall be available 99.9%, measured monthly, excluding holidays and weekends and scheduled maintenance. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than **one hour**, Company will credit Customer **5% of Service fees** for each period of **60 or more consecutive minutes of downtime**; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.



## EXHIBIT B

### **Support Terms**

Company will provide remote (via WebEx, email, and telephone as necessary) technical support for our services on a business day basis. Business day is defined as 8:00 AM through 5:00 PM Central Time zone, excluding federal holidays and weekends (“**Support Hours**”).

Company will provide an online tool such as “Zoho” for issue management to support services covered in the scope for this agreement. Management and tracking of the issues will be done using this tool.

Customer will report the issue via email, telephone or by logging the issue in the issue managements system. If the issue is logged via email or telephone, the Company shall enter the same into the issue management system.

All the stakeholders who have access to the issue management system will be able to get status of the issues anytime.

Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.