

Hitek Go™

Terms of Service

Hitek Logistics Inc. (“**Hitek**”) owns and operates a courier management software platform that it makes commercially available to its customers for use as a cloud based, hosted service offering (the “**Service**”, as more fully defined below).

In connection with the use of the Service you and/or your organization or corporation (the “**Customer**”) hereby agree to the terms of service and conditions contained herein (collectively, the “**Terms of Service**”).

BY ACCEPTING THE TERMS OF SERVICE, EITHER BY: A) SIGNING AN ORDER FORM (AS DEFINED BELOW) WHICH REFERENCES THESE TERMS OF SERVICE OR ACCEPTING THESE TERMS OF SERVICE ONLINE, B) ACTIVATING AN ACCOUNT, OR C) USING, OR ACCESSING THE SERVICE AFTER BEING MADE AWARE OF THESE TERMS OF SERVICE, THE CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL OF THE PROVISIONS, AND HAS THE AUTHORITY TO AGREE TO, AND IS CONFIRMING THAT IT IS AGREEING TO, COMPLY WITH AND BE BOUND BY, ALL OF THESE TERMS OF SERVICE, THE APPLICABLE ORDER FORM AND THE [HITEK PRIVACY POLICY](#), ALL OF WHICH ARE INCORPORATED BY REFERENCE AND DEEMED TO BE PART OF THE ENTIRE AGREEMENT ENTERED INTO BETWEEN HITEK AND THE CUSTOMER. IF, AFTER READING THESE TERMS OF SERVICE, THE CUSTOMER DOES NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THE CUSTOMER SHALL NOT USE OR ACCESS THE SERVICE.

IF YOU ARE AN AGENT OR EMPLOYEE OF THE CUSTOMER THEN YOU HEREBY REPRESENT AND WARRANT THAT: (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON CUSTOMER’S BEHALF AND TO BIND THE CUSTOMER, AND (II) THE CUSTOMER HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

1. Definitions

1.1 In this Agreement:

“**Additional Charges**” has the meaning given to such term in Section 5.4 hereof.

“**Agreement**” means these Terms of Service and, if applicable, an Order Form.

“**Carrier Account**” means an account maintained by either Hitek or the Customer through which Shipments are processed.

“**Customer**” means the customer named in the applicable Account or Order Form.

“**Customer Data**” means the data submitted by or for Customer to the Service or collected and processed by or for Customer using the Service, including the data of Customer’s Users.

“**Data Controller**” shall mean the natural or legal person who alone or jointly with others determines the purposes and means of the processing of Personal Information.

“**Data Processor**” shall mean the natural or legal person who processes Personal Information on behalf of the Data Controller.

“**Data Protection Laws**” means all laws and regulations, including laws and regulations of Canada (including the *Personal Information Protection and Electronic Documents Act* (Canada) and the Canadian Anti-Spam Legislation), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, including the GDPR. applicable to the Processing of Personal Information under the Agreement.

“Documentation” means the written or electronic documentation, including user manuals, reference materials, installation manuals and/or release notes, if any, that Hitek generally makes available to subscribers to the Service, as the case may be.

“Price” means the Shipment Price.

“Fees” mean the Subscription Fees.

“GDPR” means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Information and on the free movement of such data, and repealing Directive 95/46/EC (*General Data Protection Regulation*).

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and trojan horses.

“Order Form” means (i) an electronic form provided by Hitek on its website for ordering Service Subscriptions, or (ii) a written document executed by Hitek and Customer in respect to Customer’s purchases of Service Subscriptions from Hitek.

“Personal Information” means any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws.

“Processing” means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Service” means the hosted courier management software platform for which Customer is granted rights of access and use in accordance with this Agreement, which resides on a server operated by or on behalf of Hitek and which will be remotely accessible over the Internet by Customer and its Users, including any ancillary services available in connection therewith, as such Service may be updated from time to time by Hitek in its sole discretion.

“Shipment” means using the Service to select a carrier and to use that carrier to ship goods for the Customer through the Hitek Carrier Account from a point of origin to a destination selected by the Customer.

“Shipment Price” is the price charged by Hitek to process a Shipment through the Hitek Carrier Account and which is calculated and payable in accordance with Section 5.2 below.

“Shipment Price Corrections” has the meaning given to such term in Section 5.4 hereof.

“Software” means the Hitek’s proprietary software program(s) known as Hitek Go™, including the Documentation for such program(s) and which is made available by Hitek as a Service for use by Customer in accordance with the terms hereof.

“Subscription” means the right granted by Hitek to Customer to access and use the Service in accordance with this Agreement for the Subscription Term.

“Subscription Fee” means the fee payable by Customer for a Subscription as set out in the Order Form.

“Subscription Term” means the period of time that Customer is authorized by Hitek to access and use the Service (including the Documentation).

“Support Services” means the technical support services for the Service provided by Hitek as described in, and in accordance with, the Support Terms.

“**Support Terms**” means the terms on which Hitek, or an authorized support partner, provides Support Services to Customer and which are available at [Hitek Go Support Services Policy](#).

“**User**” means an employee or contractor of Customer to whom Customer (or Hitek at Customer’s request) has supplied a user identification and password.

2. **The HitekGo™ Service**

2.1 **Right to Use the Service.** Subject to the terms and conditions of this Agreement and payment of the applicable Fees and Prices, Hitek hereby grants to Customer a non-exclusive, worldwide, non-transferable, non-sublicensable, internal right to (a) access and use (and to permit Users to access and use) the Service, solely during the Subscription Term; and (b) access and use, and to permit Users to access and use, the Documentation as reasonably necessary to support the Customer’s permitted use of the Service during the Subscription Term.

2.2 **Reservation of Rights.** Hitek and its licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trade-mark rights, trade secret rights and all other intellectual property rights), in and to the Software, Service and Documentation and any copies, corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Software and subject to all of the provisions of this Agreement. Customer shall keep the Software and Documentation free and clear of all liens, encumbrances and/or security interests. Subject to the limited rights expressly granted in this Agreement, Hitek reserves all rights, title and interest in and to the Software and Documentation. No rights are granted to Customer pursuant to this Agreement other than as expressly set forth in this Agreement.

2.3 **Restrictions.** Customer shall not (and shall not allow Users or any third party to): (a) possess, download or copy the Service or any part of the Service, including but not limited any component which comprises the Service, but not including any output from the Service; (b) knowingly interfere with service to any of Hitek’s users, host or network, including by means of intentionally submitting a virus, overloading, flooding, spamming, mail bombing or crashing; (c) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Software, Service and/or Documentation, except to the extent that enforcement is prohibited by applicable law; (d) circumvent any timing restrictions that are built into the Service; (e) sell, rent, lend, transfer, distribute, license, or grant any rights in the Service or Documentation in any form to any person without the written consent of Hitek; (f) remove any proprietary notices, labels, or marks from the Service or Documentation; (g) create any “links” to or “frame” or “mirror” of the Service or any portion thereof; or (h) use the Service to create, collect, transmit, store, use or process any Customer Data that: (i) Customer does not have the lawful right to create, collect, transmit, store, use or process, or (ii) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity).

2.4 **Rights in Derivative Data.** Customer acknowledges and agrees that the Service compiles, stores and uses aggregated data and system usage, analytics and diagnostic information to monitor and improve the Service and for the creation of new products. Customer hereby grants to Hitek a non-exclusive, transferable, assignable, irrevocable, worldwide, perpetual license to collect, process and aggregate Customer Data and other such information and data and create anonymized, aggregated data records and use such anonymized and aggregated data, and all modifications thereto and derivatives thereof (“**Derivative Data**”) to improve the Service, develop new products and services, to understand usage, and for any other business purpose. This Derivative Data is no longer associated with Customer or a User and as such is not Customer Data.

3. **Subscription Term**

3.1 For Customers that have executed an Order Form, this Agreement commences on the date specified in the applicable Order Form and shall continue for the period specified in the Order Form or until terminated earlier in accordance with the provisions of this Agreement or applicable law (the “**Subscription Term**”). Unless otherwise agreed upon in the applicable Order Form, Subscriptions shall automatically renew for additional periods of one (1) year at the list price then in effect at the time of renewal, unless Customer gives Hitek written notice of non-renewal at least thirty (30) days prior to the end of the Subscription Term.

3.2 For Customers that have not executed an Order Form, this Agreement commences on the date on which the Customer creates an Account, and shall continue for until the Customer ceases to use the Service or until terminated earlier in accordance with the provisions of this Agreement or applicable law (the “**Subscription Term**”).

4. **Account Activation**

4.1 **Account**. Customer is required to open an account with Hitek (an “**Account**”) in order to use the Services. During registration, a User will be asked to provide Personal Information in order to create an Account on behalf of Customer. Customer shall ensure that such account activation information is accurate and complete and that such information remains current throughout the Subscription Term. Customer is fully responsible for all activity that occurs in Customer’s Account, including for any actions taken by its Users. Hitek may approve or reject an application to register for the Service in its sole discretion. If Hitek rejects an application, it is not obliged to provide the Customer with its reasons for doing so. If Hitek approves an application to open an Account, it will notify the Customer by email, and the Customer will then be able to access and use the Service.

4.2 **Passwords**. Customer is responsible for keeping all Account passwords secure. Hitek will not be liable for any loss or damage caused by or arising from a failure by Customer or its Users to maintain the security of the Customer’s Account and password.

4.3 **Customer Responsibilities**. Customer is also responsible for all activity in the Account and for Customer Data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with Customer’s Account.

5. **Fees, Prices and Payment Terms**

5.1 **Subscription Fees**. If Customer has executed an Order Form with Hitek then Customer shall pay the Subscription Fees in the amounts and at the times specified in the applicable Order Form for a Service Subscription. Except as otherwise specified herein or in an Order Form, Subscription Fees are not based on actual usage and are non-refundable.

5.2 **Shipment Price**. For each Shipment order placed by Customer through the Hitek Carrier Account, Hitek will charge Customer a price (“**Shipment Price**”). Shipment Prices relating to each such Shipment are fully visible to the User prior to acceptance of the Shipment, although Shipment Price Corrections and Additional Charges (each as defined in Section 5.4 below) may be applicable and charged to you following the completion of a Shipment. No Shipment Prices are charged by Hitek or payable by Customer on Shipment orders placed by Customer through its own Carrier Account using the Service.

5.3 **Billing and Payment Terms**. Unless otherwise agreed to by Hitek, Shipment Prices are billed by Hitek bi-weekly and payable by Customer within thirty (30) days from the date of Hitek’s invoice. Unless otherwise specified in the applicable Order Form, Subscription Fees are due and payable within thirty (30) days of receipt of Hitek’s invoice. Customer is responsible for maintaining complete and accurate billing and contact information with Hitek. If the Customer has provided a pre-authorized debit authorization (“**PAD Authorization**”), then the Shipment Prices will be charged to the Customer’s account immediately upon completion of the Shipment. Shipment Price Corrections and Additional Charges will be invoiced as soon as reasonably possible following a determination by Hitek that such charges are applicable and may be withdrawn from Customer’s account or charged to Customer’s credit card pursuant to the Customer’s then-current PAD Authorization as such charges are determined by Hitek.

5.4 **Shipment Price Corrections and Other Additional Charges**. Hitek reserves the right to charge (a) Shipment Prices based upon the packages actually tendered for shipment by Customer using the Hitek Carrier Account and not the Customer’s representation as to the package weight and dimensions (“**Shipment Price Corrections**”), and (b) any other handling or special charges or fees charged by the courier (“**Additional Charges**”). Shipment Price Corrections and Additional Charges will be reflected in a subsequent invoice or charge Customer’s credit card based on the actual weight and dimensions of the package and the imposition by the courier of any other handling or special fees or charges.

5.5 Overdue Charges. Any payment not received from Customer by the due date will accrue (except with respect to charges then subject to a reasonable and good faith dispute), late charges at the rate of 1.5% of the outstanding balance per month (19.57% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.6 Suspension for Non-Payment. Hitek may immediately suspend or terminate Customer's Subscription to use the Service if Customer fails to make any payment of Fees or Prices when due and does not cure such non-payment within three (3) business days after receiving notice of such failure. Any suspension of the rights hereunder by Hitek under the preceding sentence shall not excuse Customer from its obligation to make all payment(s) under the Agreement.

5.7 Payment Disputes. Hitek will not exercise its rights under Sections 5.5 or 5.6 hereof if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.8 Taxes. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, HST, GST, sales, value-added, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Hitek has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Hitek will invoice Customer and Customer will pay that amount unless Customer provides Hitek with a valid tax exemption certificate authorized by the appropriate taxing authority.

5.9 Audits. Hitek shall have the right, with reasonable notice and during normal business hours, at Hitek's sole expense and in as non-disrupting a manner as reasonably possible, to verify Customer's compliance with Customer's obligations hereunder through a remote or an on-site audit of Customer's records, facilities and licensing processes by Hitek or a third party representative of Hitek. Customer shall permit up to one such audit per year, including once during the 12 month period following the termination of this Agreement for any reason. Hitek may use such audit reports solely to enforce its rights hereunder and shall otherwise treat audit reports and any information received in connection with such audits as Confidential Information. In the event that an audit establishes that Customer is in material breach of its obligations hereunder, Customer shall reimburse Hitek for the cost of the audit and shall promptly pay to Hitek all outstanding amounts owed.

6. Support Services

During the Subscription Term, Hitek, or its authorized support partner, will provide Support Services at no additional charge, in accordance with the Support Terms. Hitek may amend the Support Terms by giving Customer at least thirty (30) days' written notice of any amendments thereto. Hitek shall not be required to provide Support Services if Customer is in default of any of Customer's obligations under this Agreement.

7. Customer Data

7.1 Ownership. As between Hitek and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Hitek does not acquire any rights, title or ownership interest of any kind whatsoever, express or implied, in any of the Customer Data.

7.2 Customer Obligations. Customer is responsible for properly configuring and using the Service in a manner that provides security and redundancy of its Customer Data to prevent unauthorized access to its Service account and to prevent unauthorized access to Customer Data and ensuring the appropriate level of backup to prevent any loss of its Customer Data.

7.3 Customer Data Portability and Deletion. Upon request by Customer made during the term hereof or within 30 days after the effective date of termination of this Agreement, Hitek will make the Customer Data available to Customer for export or download as provided in the Documentation. After such 30 day period, Hitek will have no obligation to maintain or provide any Customer Data, and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control as provided in the Documentation, unless legally prohibited.

8. Protection of Personal Information

8.1 Customer is Data Controller. In relation to all Personal Information provided by or through Customer to Hitek under this Agreement, Customer will at all times remain the Data Controller and will be responsible for compliance with all applicable Data Protection Laws. To the extent that Hitek processes Personal Information in the course of providing the Service and related services under this Agreement, it will do so only as a Data Processor acting on behalf of the Customer (as Data Controller) and in accordance with the requirements of this Agreement.

8.2 Hitek's Processing of Personal Information. Hitek shall only Process Personal Information on behalf of and in accordance with Customer's documented instructions and Data Protection Laws for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Customer's Users or customers in their use of the Service; and (iii) Processing to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement.

8.3 Technical and Organizational Safeguards. In connection with the provision of the Service, Hitek will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Personal Information and shall secure Personal Information with safeguards appropriate to the level of sensitivity of the Personal Information. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Personal Information by Hitek personnel except (a) to provide the Service and prevent or address service or technical problems, (b) as compelled by law and upon identification of lawful authority, or (c) as expressly permitted in writing by Customer. Hitek shall, in connection with the provision of the Service, comply with Data Protection Laws, as well as the Hitek's Privacy Policy. Hitek shall ensure that its personnel engaged in the Processing of Personal Information are informed of the confidential nature of the Personal Information and have received appropriate training on their responsibilities and Hitek shall take commercially reasonable steps to ensure the reliability of any Hitek personnel engaged in the Processing of Personal Information.

8.4 Data Breach. Upon becoming aware of any unlawful access to any Personal Information, any unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of any Personal Information, or any actual loss of or suspected threats to the security of Personal Information (including any physical trespass on a secure facility, computing systems intrusion/hacking, loss/theft of a computing device, storage media or printed materials, or other unauthorized access) (each a "**Security Incident**"), Hitek will promptly notify Customer of the Security Incident (and in all circumstances at least as soon as it reports to similarly situated customers of Customer, but in any event as soon as reasonably possible in the circumstances), and will investigate or perform required assistance in the investigation of the Security Incident and provide Customer with detailed information about the Security Incident. Hitek will take all commercially reasonable steps to mitigate the effects of the Security Incident, or assist Customer in doing so; and will provide prior notice to Customer of, and will not undertake any, proposed communications to third parties related to a Security Incident involving Personal Information without Customer's prior written approval, not to be unreasonably withheld, conditioned or delayed. Hitek will work with and coordinate with Customer on any such notices in any event. Hitek will comply with this Section 8.4 at Hitek's cost unless the Security Incident arose from Customer's negligent or willful acts or Hitek's compliance with Customer's express written instructions.

8.5 Subcontracting. Hitek may engage third party subcontractors to assist in the provision of the Service under this Agreement. Customer authorizes Hitek to subcontract the processing of Personal Information under this Agreement provided that (i) Hitek shall maintain a list of such subprocessors and will provide a copy of that list to Customer upon request; and (ii) all subprocessors will be contractually required by Hitek to abide by substantially the same obligations as Hitek under this Agreement to protect Personal Information, such that the data processing terms of the subcontract will be no less onerous than the data processing terms set out in this Agreement.

9. Customer Responsibilities

9.1 Users. Customer is responsible for all activities that occur in User accounts and for its and its Users' compliance with this Agreement. Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data and the means by which Customer acquired

Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software or the Service, and notify Hitek promptly of any such unauthorized access or use; and (c) use the Service only in accordance with the Documentation and applicable laws and government regulations.

9.2 Use Guidelines. Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not interfere with or disrupt the integrity or performance of the Service or the data contained therein.

9.3 Processing of Personal Information. Customer shall, in its use of the Service, Process Personal Information in accordance with the requirements of Data Protection Laws. For the avoidance of doubt, Customer's instructions to Hitek for the Processing of Personal Information shall comply with Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Information and the means by which Customer acquired Personal Information. Customer hereby represents and warrants to, and covenants with Hitek that Customer Data will only contain Personal Information in respect of which Customer has provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise has all authority, in each case as required by applicable laws, to enable Hitek to provide the Service, including with respect to the collection, storage, access, use, disclosure and transmission of Personal Information, including by or to Hitek and to or from all applicable third parties.

9.4 Equipment. Customer is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services (such as Internet access) that are required to allow Customer to access and use the Service and for all expenses relating thereto. Customer agrees to access and use, and shall ensure that all Users access and use, the Service in accordance with any and all operating instructions or procedures that may be issued by Hitek from time to time.

9.5 Feedback. Customer may provide reasonable feedback to Hitek including, but not limited to, suitability, problem reports, suggestions and other information with respect to the Service ("**Feedback**"). Customer hereby grants to Hitek a fully paid-up, royalty-free, worldwide, assignable, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Software, Service, Documentation and any other Hitek products or services, or for any other purposes, any Feedback provided by Customer or its Users.

10. Confidentiality Obligations

The Software and the Service, including the specific design, structure and logic of individual programs, their interactions both internal and external, and the programming techniques employed therein are considered confidential and trade secrets of Hitek and/or its licensors (the "**Confidential Information**"), the unauthorized disclosure of which would cause irreparable harm to Hitek. Customer shall not use such Confidential Information except to the extent necessary to exercise the rights granted to Customer hereunder. For greater certainty, Customer shall not disclose any performance, benchmarking, or feature-related information about the Software or the Service. Customer further agree not to disclose, transfer or otherwise provide to any third party any portion of the Software, the Service, Documentation or confidential information or know-how, except as explicitly permitted herein. Customer shall use the same degree of care and means that Customer use to protect Customer's own information of a similar nature, and in any event, shall use reasonable efforts to prevent the disclosure of Confidential Information to any third parties. This confidentiality obligation shall continue to apply to the Confidential Information following the termination hereof, provided that the confidentiality provisions contained herein shall not apply to Confidential Information which (i) was known by Customer prior to disclosure, as evidenced by its business records; (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of the confidentiality provisions contained herein; (iii) was disclosed to Customer by a third party, provided such third party or any other party from whom such third party receives such information is not in breach of any confidentiality obligation in respect of such information; or (iv) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, provided that Customer shall give all reasonable prior notice to Hitek to allow it to seek protective or other court orders.

11. Limited Warranties and Disclaimers

11.1 Limited Warranties. Hitek hereby represents and warrants to Customer that:

- (a) During the Subscription Term the Service will perform materially in accordance with the Documentation;
- (b) the Service will not contain any Malicious Code; and
- (c) it owns or otherwise has sufficient rights in the Service and Documentation to grant to Customer the rights to access and use the Service and Documentation granted herein.

11.2 General Warranty Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, THE SERVICE AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND HITEK MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, ENDORSEMENTS, UNDERTAKINGS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE) AS TO, ARISING OUT OF OR RELATED TO THE FOLLOWING: (I) THIS AGREEMENT; (II) THE SERVICE; AND/OR (III) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION OR CUSTOMER DATA TRANSMITTED TO OR FROM HITEK VIA THE SERVICE. HITEK DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE SERVICE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL PROGRAMMING ERRORS IN THE SOFTWARE CAN BE FOUND IN ORDER TO BE CORRECTED. HITEK DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

11.3 Internet Connectivity Disclaimer. Hitek makes the Service available for access via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Service over the Internet. Customer is responsible for and shall ensure that Customer's computer equipment and an internet connection meets the minimum specifications published by Hitek in the Documentation and updated from time to time on the Hitek's website, and Customer shall periodically update Customer's computer equipment and/or Internet connection to meet such minimum specifications. Customer hereby acknowledges that the Service may be interrupted due to (a) website downtime for scheduled maintenance at Hitek's sole discretion, or (b) interruptions in Internet connectivity or other website downtime caused by circumstances beyond Hitek's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures, or delays involving hardware or software not within Hitek's control or network intrusions. Customer hereby acknowledges and agrees that Hitek shall not, in any way, be liable for, or have responsibility with respect to, any such service interruptions and releases Hitek from any claims relating thereto.

12. Intellectual Property Infringement Indemnification

12.1 Indemnification by Hitek. Subject to this Agreement, Hitek shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with claims, demands, suits, or proceedings made or brought against Customer by a third party alleging that the use of the Service and Documentation as contemplated hereunder infringes the intellectual property rights of a third party (each an "**Infringement Claim**"); provided, that Customer (a) promptly gives written notice of the Infringement Claim to Hitek; (b) gives Hitek sole control of the defense and settlement of the Infringement Claim (provided that Hitek may not settle or defend any Infringement Claim unless it unconditionally releases Customer of all liability); and (c) provides to Hitek, at Hitek's cost, all reasonable assistance and information.

12.2 Other Remedies. If (a) Hitek becomes aware of an actual or potential Infringement Claim, or (b) Customer provides Hitek with notice of an actual or potential Infringement Claim, Hitek may (or in the case of an injunction against Customer, shall), at Hitek's sole option and determination: (i) procure for Customer the right to continue to use the Service; or (ii) replace or modify the Service with an equivalent or better Service so that Customer's use is no longer infringing; or (iii) if (i) and (ii) are not commercially reasonable, as determined by Hitek in its sole discretion, terminate the rights granted hereunder to the Customer to access and use the Service and refund to Customer that portion of any prepaid Subscription Fees that is applicable to the period

following the termination of the Subscription pursuant to this Section 12.2, less any outstanding Fees owed on such affected portion of the Service.

12.3 Exclusions. The indemnity in Section 12.1 does not extend to (a) any Infringement Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Service with other products, software or services not provided or approved by Hitek, if such infringement would have been avoided but for such combination; (b) any Infringement Claim in respect to any version of the Service other than the most current version; or (c) any use, distribution, sublicensing or exercise of any other right outside the scope of this Agreement.

12.4 Limitation. Notwithstanding any other provision of this Agreement, the liability of Hitek to Customer under this Section 12 shall not exceed \$500,000. Hitek agrees to obtain Customer's consent for any settlement in excess of \$500,000. In no event shall Hitek be responsible for any cost, expense or compromise incurred or made by Customer without Hitek's prior written consent.

12.5 Sole Remedies. THIS SECTION 12 CONTAINS HITEK'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, FOR INFRINGEMENT CLAIMS.

13. Indemnification by Customer.

Customer shall defend, indemnify and hold Hitek harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against Hitek by a third party (a) alleging that the Customer Data or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; (b) based on a breach of any Data Protection Laws or a breach of this Agreement; or (c) caused by any negligent act or omission of Customer or its employees, contractors or agents (each a "**Customer Indemnified Claim**"); provided, that Hitek (a) promptly gives written notice of the Customer Indemnified Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Customer Indemnified Claim (provided that Customer may not settle or defend any Customer Indemnified Claim unless it unconditionally releases Hitek of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance and information.

14. Limitation of Liability

14.1 Exclusion of Indirect and Consequential Damages. SUBJECT TO SECTION 14.3 HEREOF, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS).

14.2 Limitation of Liability. SUBJECT TO SECTION 14.3 HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES AND DAMAGES EXCEED THE FEES ACTUALLY PAID BY CUSTOMER IN THE THREE (3) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

14.3 Certain Damages Not Excluded or Limited. NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER; (II) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (III) INDEMNIFICATION CLAIMS (SUBJECT TO THE LIMITATION CONTAINED IN SECTION 12.4 HEREOF), (IV) FRAUD OR WILLFUL MISCONDUCT, OR (V) BODILY INJURY OR DEATH.

14.4 Application of Exclusions and Limitations. The foregoing limitations and exclusions of liability shall apply even if a party had been advised of the possibility of any such costs, losses or damages or knew or ought to have known of such costs, losses or damages and shall apply regardless of whether the action arose in contract, including, without limitation, from a fundamental breach, or breach of a condition, fundamental term or warranty, or in tort (including, without limitation negligence) or otherwise. The foregoing provisions limiting the

liability of Hitek shall also apply to its officers, directors, employees, and agents as trust provisions for the benefit of such officers, directors, employees, and agents and shall be enforceable by such persons as trust beneficiaries.

15. **Termination**

15.1 **Termination for Cause.** A party may terminate this Agreement or a Subscription for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

15.2 **Refund or Payment upon Termination.** If this Agreement or a Subscription is terminated by Customer in accordance with Section 15.1, Hitek will refund Customer any prepaid Subscription Fees covering the remainder of the Subscription Term following the effective date of termination. If this Agreement is terminated by Hitek in accordance with Section 15.1, Customer will pay any unpaid Fees applicable to the remainder of the Subscription Term for any current Subscriptions. In no event will termination relieve Customer of its obligation to pay any Fees payable to Hitek for the period prior to the effective date of termination.

15.3 **Suspension of Access to Service.** In addition to any termination rights of Hitek pursuant to this Agreement, extraordinary circumstances may require Hitek to suspend or terminate (where appropriate), as determined in Hitek's reasonable discretion, Customer's access to and/or use of, or otherwise modify, the Service in order to: (a) prevent material damages to, or material degradation of the integrity of, Hitek's or its provider's Internet network; or (b) comply with any law, regulation, court order, or other governmental order. Hitek will notify Customer of such suspension or termination action as far in advance of such suspension or termination as reasonably possible, and if such advance notice is not possible, then as soon as possible after such suspension or termination. In the event of a suspension, Hitek will limit such suspension to that which is minimally required and will promptly restore Customer's access to the Service as soon as the event giving rise to the suspension has been addressed (including by Customer agreeing to accept the risks associated with such suspension) or resolved.

16. **Export Restrictions; US Government Licenses**

Customer hereby represents and warrants that Customer is not located in, under the control of, and is not a national or resident of, any country to which the export of the Software or related information would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer also represents and warrants that Customer is not an individual to whom the export of the Software or related information would be prohibited by the laws and/or regulations of Canada and/or the United States. Customer shall comply with the export laws and regulations of Canada and the United States that are applicable to the Software and related information and Customer shall comply with any local laws and/or regulations in Customer's jurisdiction that may impact Customer's right to export, import, or use the Software or related information, and Customer represents and warrants that Customer has complied with any such applicable laws and/or regulations.

17. **Assignment**

Customer may not assign any of its rights or obligations hereunder, whether by operation of law, change of control or otherwise, without the prior written consent of Hitek. Notwithstanding the foregoing, Hitek may assign this Agreement in its entirety without the consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which this Agreement relates. Any attempt by Customer to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

18. **General**

18.1 **Force Majeure.** Neither Hitek nor Customer shall be deemed to be in default of any provision of this Agreement (other than Customer's obligation to pay amounts due to Hitek hereunder) for any failure in

performance resulting from acts or events beyond its reasonable control, including acts of God, acts of civil or military authority, civil disturbance, strikes, fires, epidemics, or other catastrophes.

18.2 Waiver. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

18.3 Independent Contractors. The relationship of Hitek and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (i) give either party the power to direct and control the day to-day activities of the other, (ii) constitute the parties as legal partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial and other obligations associated with the businesses of the parties are their sole respective responsibilities.

18.4 Governing Law. This Agreement shall be governed by the laws of the Province of Quebec, without regard to its conflict of law principles. The courts located in the Province of Quebec shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement and each party hereby consents to the exclusive jurisdiction of such courts. The application of the *United Nations Convention on Contracts for the International Sale of Goods* to this Agreement is expressly excluded and does not apply to this Agreement.

18.5 Language of Agreement. The parties hereto confirm that they have requested that this agreement and all related documents be drafted in English. Any French translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties. *Les parties aux présentes ont exigé que la présente entente et tous les documents connexes soient rédigés en anglais. Toute traduction de celle-ci est non-officielle, est fournie à des fins d'information seulement et ne crée aucun lien contractuel entre les parties.*

18.6 Entire Agreement. This Agreement is the entire agreement between Customer and Hitek in respect to the subject matter hereof, superseding any other agreements or discussions, oral or written, and may not be changed except by a written license agreement with Hitek.

18.7 Purchase Orders etc. The terms and conditions of this Agreement shall prevail over any pre-printed terms on any quotes, orders, purchase orders, or purchase order acknowledgements, and shall prevail over any other communications between the parties in relation to the Service and Documentation and the right to access and use the Service and Documentation shall be deemed to be pursuant to the terms and conditions of this Agreement, unless Customer has executed a written license agreement with Hitek, in which case the Service and Documentation shall be deemed to have been licensed pursuant to the terms and conditions of such written license agreement.

18.8 Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

18.9 Amendments. UNLESS CUSTOMER HAS EXECUTED AN ORDER FORM, HITEK MAY UNILATERALLY AMEND THESE TERMS OF SERVICE, IN WHOLE OR IN PART (EACH, AN "**AMENDMENT**"), BY: (I) GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT; OR (II) POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY HITEK ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON THE WEBSITE (WHICHEVER IS EARLIER).

Last update: May 12, 2020.