

## Hiptest General Terms and Conditions

**IMPORTANT- READ CAREFULLY ALL THESE GENERAL TERMS AND CONDITIONS (the "GTC") BETWEEN HIPTTEST INC., A COMPANY INCORPORATED UNDER CALIFORNIA LAW ("HIPTTEST") AND YOURSELF ("CLIENT") BEFORE CONTINUING REGISTRATION. BY CLICKING THE "SIGN UP" BUTTON OR OTHERWISE ACCEPTING THE AGREEMENT THROUGH AN ORDERING DOCUMENT THAT ACCOMPANIES AND INCORPORATES THESE GTC (THE "ORDERING DOCUMENT"), YOU ("CLIENT") AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT (THE "AGREEMENT"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE AGREEMENT, IN WHICH CASE "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THE AGREEMENT, YOU MUST NOT ACCEPT IT AND MAY NOT USE THE SERVICES.**

### 1- Definitions

**Agreement:** by decreasing order of priority, the applicable Ordering Document which accompanies and incorporates these GTC.

**Application:** the software application(s) to be tested as part of Client's Project.

**Client's Project:** the Application testing operation performed by Client with the Software as part of the Services under the related Ordering Document.

**Commercial Subscription:** the paying subscription for the Services by Client as defined in the Ordering Document and under the terms of the Agreement.

**Confidential Information:** all information, and/or data of any nature (including personal data), under any form (notably orally) and any media, which is communicated by a Party to the other Party or which is brought to the other Party's knowledge; given that the signature, the existence, the execution of the Agreement, and the code of the Software shall be deemed Confidential Information under the Agreement. Confidential Information does not include: (i) any information held by the receiving Party before the date of communication thereof, as shown in a valid way by the receiving Party, notably that such information has been communicated to the latter by a third party, in a lawful way and in good faith; (ii) any information which has come into the public domain at the time of its communication or since its communication, without any breach of its non-disclosure obligations by the receiving Party; (iii) any information which is developed independently by the receiving Party, provided that the latter proves that it has not used or made reference to any Confidential Information as part of the development of such information; and/or (iv) any information which is disclosed pursuant to judicial order or lawful requirement of governmental agency or by operation of law.

**Connection Data:** each User's login and password, which enable the access to the Services.

**Data:** any data, information or material processed by Client in the course of using the Services.

**Documentation:** the English version of the electronic written material (if any) - as updated from time to time - made available to Client under the Agreement, which includes the main processes and guidelines to facilitate the use of the Services.

**Effective Date:** the date of the Services Opening by Hiptest.

**Environment:** the technical pre-requisites defined in Hiptest Site and accessible via <https://hiptest.net> to the GTC corresponding to the latter's computer equipment (hardware, operating system, software, subscription to an internet access service) and its evolutions, required for the launching and use of the Services.

**Error:** any repetitive and reproducible failure or malfunction of the unmodified Software, when used in accordance with the terms and conditions of the Agreement and the Documentation.

**Free Trial:** the right to access to the free Services for evaluation purposes, in accordance with the terms and conditions of the Agreement.

**General Terms and Conditions/GTC:** this document.

**Hiptest Site:** the Hiptest's internet website (<https://hiptest.net>) on which the Software and its description, the Services, the description of the Environment and the Ordering Document are available.

**Maintenance:** the Support Services and the Upgrade Maintenance as part of the Commercial Subscription.

**Ordering Document:** the online document and its exhibits if any, for placing the order hereunder, which identifies Client, as a contracting Party, the level, the scope and the term of the Services, and the financial conditions relating to the Commercial Subscription; it being agreed that by entering into an Ordering Document hereunder, Client agrees to be bound by these GTC and that to be valid, any Ordering Document must be accepted by Hiptest; each Ordering Document being firm and independent from the other Ordering Documents.

**Party/Parties:** individually Hiptest or Client, and collectively Hiptest and Client.

**Server:** the computer equipment (computer hardware and/or software) on which the Software is hosted, owned by Hiptest or whose Hiptest owns the necessary rights to conclude and execute the Agreement; such equipment being installed in the geographical location(s) of Hiptest's choice and connected to telecommunication networks and to the Internet.

**Services Level Agreement/SLA:** the service level arrangements set out in section 8 to the GTC, within the framework of the Commercial Subscription.

**Services:** the Services ordered by Client under an Ordering Document as provided online by Hiptest and accessible via <https://hiptest.net>, subject to the provisions of the Free Trial or the Commercial Subscription under the Agreement.

**Services Opening:** the date Hiptest carries out the creation of an access to the Services for the benefit of Client who can connect to them, through Connection Data.

**Software:** (i) the version of the proprietary software program(s) in English language and in object code, as defined in the Ordering Document, intended to be used exclusively on a rental basis via the Internet as "software as a service" and within the framework of the Services, (ii) the Documentation (if any) and (iii) any Update thereof (if any).

**Support Services:** the provision of technical support related to the Software as part of the Commercial Subscription.

**Update(s):** the English language version of the bug corrections and/or enhancements of the Software, in the form of files and/or object code, including the Documentation updates if any. Updates may include new additional modules at Hiptest's sole discretion.

**Upgrade Maintenance:** the access to the Updates of the Software as part of the Free Trial and the Commercial Subscription.

**User:** an individual (Client's employee, consultant and/or contractor) who is authorized by Client to use the Services, who benefit from a login and a password, in strict accordance with the terms and conditions of the Agreement.

**User Account:** the webpage including all the personal data provided by Client available to Hiptest, after it enters its Connection Data, and on which it is necessary to pass Ordering Documents.

## **2- Purpose and applicability of the Agreement**

The purpose of the Agreement is to define the terms and conditions under which Hiptest provides Client with the Services on a non-exclusive basis.

The subscription to the Services (Free Trial and Commercial Subscription) implies the acceptance of the Ordering Document defining the level and the scope of the Services, in particular the financial conditions as part of the Commercial Subscription.

## **3- Prerequisites**

### **3.1 Client's declarations**

Client declares that prior to entering into the Agreement (i) it has checked the adequacy of Hiptest's offer to its needs, (ii) it satisfies itself as to the Environment and the internal resources which are required for the use of Hiptest's solution and (iii) it has analyzed Hiptest's offer and received all the necessary information and advice from Hiptest to appreciate Hiptest's proposal.

Client acknowledges and agrees that it may not access and use the Services, if Client is direct competitor of Hiptest, except with the prior written consent of Hiptest.

### **3.2 Environment**

The Environment is defined in Hiptest Site and accessible via <https://hiptest.net>.

Client acknowledges that any environment which does not comply with the Environment may alter the quality of the Services, for which Hiptest shall in no event be liable for.

## **4- User Account**

Prior to the initial Ordering Document, Client must create an User Account - to which Connection Data are associated and e-mailed as a reference by Hiptest to the e-mail address provided by Client. For the avoidance of doubt, in no event shall this reference number be construed as the acceptance of Client's Ordering Document by Hiptest.

Client is entitled only one (1) User Account per email address.

Hiptest shall provide all reasonable means in order to protect the personal data of Client, but shall in no event be liable for any loss of such data.

Client is liable for both confidentiality and security of its own User Account (notably Connection Data) and guarantees Hiptest against any third party use.

Client acknowledges and agrees that any Ordering Document from its User Account firmly and irrevocably binds Client.

## **5- Services Opening and operation of the Services**

**5.1** Subject to an Ordering Document duly accepted by Hiptest, Hiptest shall provide Client with the Services Opening, for the term of the Free Trial or the Commercial Subscription, as defined in the Agreement. Thus, it shall put at Client's disposal an administration interface available through Hiptest Site; Client being responsible for (i) the creation and attribution of Connection Data to the Users and (ii) their use.

**5.2** Client shall be responsible for taking all necessary measures to control the access and use of the Services in

order to prevent unauthorized third parties from accessing the Services; it being agreed that any use of the Services with Connection Data is deemed made by Client or any of the Users for which Client is responsible for. Client undertakes to alert Hiptest immediately of any suspected or recognized security incident. In the event of loss or theft of Connection Data, Client shall immediately inform Hiptest in writing and shall implement an emergency suspension procedure in order to deactivate Connection Data of the corresponding User(s). The reinstatement of the rights shall entail an explicit request from Client to Hiptest by email, which shall be confirmed by notice in accordance with the terms of section 20.6, and shall be subject to invoicing the then applicable price.

## **6- Free Trial**

As part of the Free Trial, as specified in the Ordering Document, Hiptest grants Client a non-exclusive, personal, non-transferable, revocable and limited right to access and use the Services on a trial free basis, for the Users and for the term of the Free Trial, solely for Client's own internal purposes and within the limits defined in Hiptest Site.

Any data entered into the Services by Client and/or any customization made to the Services by or for Client during the Free Trial will be definitively lost unless Client (i) purchases a Commercial Subscription, or (ii) exports its data, in each case before the end of the Free Trial. Client may not transfer the data entered into the Services and/or customizations made during the Free Trial to a service that would be less in scope than the Services under the Free Trial; in this case, Client must export its data before the end of the Free Trial, or its data will be permanently lost.

THE SERVICES ACQUIRED FOR TRIAL PURPOSES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY (IN PARTICULAR IN TERMS OF QUALITY AND AVAILABILITY OF THE SERVICES), UNDER THE ENTIRE AND SOLE LIABILITY OF CLIENT AND AT ITS OWN RISKS. HIPTEST DISCLAIMS ANY LIABILITY DURING THE FREE TRIAL.

Except as otherwise specified in this section 6, the use of the Services during the Free Trial is governed by the other terms and conditions of the GTC.

## **7- Rights granted**

**7.1** As part of the Commercial Subscription, Hiptest grants Client a non-exclusive, personal, non-transferable, revocable and limited right to access and use the Services for the Users and for the term of the Commercial Subscription, solely for Client's own internal purposes within the limit as defined in the applicable Ordering Document.

Therefore, Client is exclusively allowed to use the Software by logging to the Server through Internet, according to the procedures and methods provided by Hiptest by any means throughout the term of the Free Trial or the Commercial Subscription.

In particular, Client is not allowed to (i) allow a third party to use the Services, except as otherwise stated in the Agreement unless as part of the performance of the Client's Project and provided that such third party expressly undertakes to comply with the terms and conditions of use of the Services as defined in the Agreement; it being agreed that Client remain responsible for any use of the Services under the Agreement; (ii) use the Software otherwise than as part of the Services and/or for any other purpose than those expressly stated in the Agreement; (iii) reproduce, download, make copies of the Software, or remove the Software from the Server, or attempt to perform such acts; (iv) modify, translate, reverse-engineer, decompile,

disassemble, recreate, even partially, make derivative works of the Software, or attempt to or enable third parties to perform such acts, except as otherwise permitted by the applicable law; (v) modify or remove the copyright identifications, trademarks and/or any other intellectual property notice, appearing in and/or on the Software, or which enables the identification of the Services; (vi) sell, rent, sublicense, make available or otherwise transfer, commercially exploit, and/or share the rights pertaining to the Services, in particular to the Software, whether in part or entirely, by any means whatsoever; (vii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts or programs; (viii) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (ix) copy any ideas, features, functions or graphics of the Software; (x) attempt to gain unauthorized access to the Services or its related systems or networks, and/or (xi) disclose results of any Services or benchmark tests without Hiptest's prior written consent.

Unless as otherwise expressly stated in the Agreement, the above provisions are fully applicable to the Client's Projects samples provided to Client under the Free Trial.

**7.2** Client grants Hiptest a worldwide, limited-term license to host, copy, transmit and display the Data, and the Application, as necessary for Hiptest to provide the Services in accordance with the Agreement.

## **8- Service Level Agreement**

As part of the Commercial Subscription, and as from the Services Opening Date:

**8.1** Hiptest shall use commercially reasonable efforts to make available to Client the Services in accordance with the provisions of the SLA as defined in section 8.2.

The SLA shall take effects at the date of Services Opening. The Services levels offered by Hiptest under these GTC represent Hiptest's diligent efforts but are not a contractual obligation. Hiptest does not guarantee that every issue or question will be resolved to Client's satisfaction.

Hiptest may - from time to time - interrupt the access to the Software for the purpose of Maintenance, without any indemnity. In case of loss or accidental destruction of Data, Hiptest will do its utmost to restore destroyed elements based on the most recent backups.

**8.2** Hiptest provides Client with the following Support Services (i) under an online assistance through its knowledge database and an online Error submission by e-mail to the following address: [support@hiptest.com](mailto:support@hiptest.com) and (ii) as part of a limited access to Web-based technical chat support, as included in the Software.

Exclusions:

Hiptest shall have no obligation as part of Support Services, in particular in the following cases: (i) error caused by any use of the Software with another environment than the Environment, notably with third parties' software, or the use of another version than the current version of the Software, and/or the use of a version of the Software modified by Client or a third party, and more generally, any use of the Services not in compliance with the provisions of the Agreement, including the Documentation and/or any other reason outside of Hiptest's control and/or independent from the Software and generally, the Services; (ii) the use of another version than the current version of the Software, and/or the use of a version of the Software modified by Client or a third party; (iii) loss of data; (iv) negligence, wilful misconduct, or fault of Client or of its personnel; (v) adjunction, connection or installation of a third party software; (vi) errors resulting from disruption or interruption of service

provided by third parties (network, telecommunications, etc.), and/or (vii) virus.

Client shall provide Hiptest with any document and/or piece of information that Hiptest will consider necessary to ensure Support Services with regard to the Software and shall follow Hiptest's recommendations and instructions, in particular those related to the execution of test procedures. In any event, Client is responsible for and in charge of the Environment, the organization and internal competences which are necessary for the good performance of the Services.

## **8.3 Upgrade Maintenance**

Hiptest provides Client with the access to the Updates when available. The Upgrade Maintenance does not include (i) any software and/or module which is not expressly covered by the Agreement, (ii) any other configuration than the Environment.

## **9- Intellectual property rights ownership**

**9.1** The Agreement is not a sale and does not convey to Client any rights of ownership in or relating to the Software, the Services, the tools, methods and/or know-how used or performed by Hiptest under the Agreement, and in general, any intellectual property rights owned by Hiptest. In this respect, the Agreement does not convey to Client any rights or licenses relating to Hiptest's logo, product and/or Services names (and those of its licensors, where applicable). Consequently, Hiptest and/or its licensors retain(s) all rights, title and interest, including all related intellectual property rights, in and to the Software and anything developed and provided under the Agreement.

**9.2** Hiptest will defend Client, at Hiptest's own expense, against any third-party claim that the possession and use of the Software in accordance with the terms of the Agreement infringe any intellectual property rights of a third party (each a "Claim"), provided that Client notifies Hiptest in writing of any such Claim as soon as it occurs, enables Hiptest to have sole control over the defence and any negotiation of a settlement of such Claim and reasonably cooperates with Hiptest, as requested by Hiptest, in connection with the defence and settlement of such Claim.

In the event any Claim is filed against Client in connection with the use of the Software, or if Hiptest deems that a Claim is likely to be asserted, Hiptest may - at its sole option and own expense - either obtain for Client the right to continue the use of the Software or replace or modify the infringing component of the Software in order to stop to such alleged infringement.

In addition to Hiptest's defense obligations above, Hiptest will indemnify Client for any damages which Client may be ordered to pay by a court of competent jurisdiction in connection with any Claim, as soon as such decision has become final and enforceable, as well as for any reasonable costs and expenses paid by Client for its defense, including reasonable legal fees, within the limit defined in section 12.

Hiptest shall not indemnify Client if Client (i) alters the Software or use the Software outside the scope of use defined in the Agreement and in the Documentation, (ii) uses a version of the Software which has been superseded if the Claim could have been avoided by using an unaltered version of the Software which was made available by Hiptest.

THIS SECTION 9.2 STATES HIPTTEST'S ENTIRE LIABILITY AND CLIENT'S SOLE REMEDY AS TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR ANY OTHER PROPRIETARY RIGHTS. CLIENT ACKNOWLEDGES AND AGREES THAT HIPTTEST SHALL IN NO EVENT BE HELD

LIABLE BEYOND WHAT IS PROVIDED IN THIS SECTION 9.2.

#### **10- Client's intellectual property rights**

Client warrants that it owns and retains the intellectual property rights in and to the Application or that it is duly granted the right to test the Application as part of Client's Project during the term of the Agreement, and that in general, it owns the rights required for the execution of the Services on the Data and the Application. In this regard, Client shall not include or transfer any illegal data through the Services. Consequently, Client is responsible and fully liable for the content of the Data and intellectual property rights ownership or right of use of such Data and the Application.

#### **11- Representations and warranties**

##### **11.1 Representations**

Each Party represents and warrants that it has the legal power and authority to enter into the Agreement. Client represents and warrants that it is not a direct competitor of Hiptest.

##### **11.2 Warranties; disclaimers; exclusive remedies**

Hiptest expressly warrants that (i) it owns the necessary rights to provide the Services, (ii) such Services shall be supplied in accordance with professional standards and the terms of the Agreement and (iii) the Software performs the essential functions described in the Documentation, when used normally with the Environment. HIPTTEST DOES NOT WARRANT THAT (i) THE PERFORMANCE OF THE SOFTWARE WILL BE UNINTERRUPTED OR FREE FROM BUGS, ERRORS OR ANY OTHER DEFECT, OR (II) THAT HIPTTEST WILL CORRECT ALL SERVICES ERRORS, AND/OR (III) THE RESULTS OBTAINED FROM THE USE OF THE SOFTWARE.

CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT'S EQUIPMENT IS CONNECTED TO THE SERVER UNDER ITS SOLE RESPONSIBILITY AND THAT HIPTTEST DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. IN NO EVENT, SHALL HIPTTEST BE LIABLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS. CONSEQUENTLY THE COMMUNICATION OF DATA AND GENERALLY OF ANY INFORMATION, IS MADE AT CLIENT'S OWN RISKS AND UNDER ITS SOLE RESPONSIBILITY.

TO THE EXTENT NOT PROHIBITED BY LAW, THE ABOVE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

##### **12- Liabilities**

**12.1** The entire risk as to the choice of the Services, their quality and performance is with Client. Further, it is Client's responsibility to take the necessary steps for the protection of its data, the Application, and systems.

The Services may be subject to limitations, delays and other problems inherent with the use of the Internet and electronic communications. In this context, Client acknowledges and agrees that under no circumstances, shall Hiptest be responsible for any delays, failures and/or other damages resulting from such problems.

Client acknowledges and agrees that it is solely responsible for any costs that Client incurs to access and

use the Services, notably the costs relating to any change thereof that may be required in the course of the Services. The Parties expressly agree that notwithstanding the nature and/or the cause of any action:

- HIPTTEST SHALL ONLY BE LIABLE FOR DIRECT DAMAGES. UNDER NO CIRCUMSTANCES, SHALL HIPTTEST BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA OR DATA USE, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF HIPTTEST AND/OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- IN NO EVENT, SHALL HIPTTEST'S ENTIRE LIABILITY UNDER THE AGREEMENT - REGARDLESS OF THE NATURE AND THE LEGAL BASIS FOR THE CLAIM AND THE PROCEDURE USED TO REMEDY IT - EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY CLIENT TO HIPTTEST FOR THE SERVICES UNDER THE APPLICABLE ORDERING DOCUMENT WHICH IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN CLIENT'S FAVOR AGAINST HIPTTEST SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CLIENT UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

**12.2** It is expressly agreed that, in any event, any claim for liability against Hiptest will be time-barred twelve (12) months after the date of the event at the origin of the damage arose.

**12.3** Neither Party shall be liable to the other Party for any failure or delay of performance if caused by an event of force majeure. Events of force majeure are those customarily accepted by case law in courts of the United States.

##### **13- Indemnification by Client**

Client shall indemnify and hold Hiptest, its affiliates, its licensors, and their respective officers, employees and directors, harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including expertise and attorneys' fees and costs) arising out of or in connection with a claim constituting a violation by Client of its representations and warranties under the Agreement, in particular any claim and/or action of a third party against Hiptest concerning the use of the Services by Client, made in violation of a provision of the Agreement, that infringes its intellectual property rights (notably and without limitation those relating to the Application) and/or causes any damage and/or violates any law or regulation whatsoever. In such event, Client intervenes, upon request and without delay to ensure the defence of Hiptest and shall bear the full cost of such proceeding, without prejudice to any damage and indemnification to which Hiptest may be entitled to claim to Client.

##### **14- Financial conditions**

#### **14.1 Fees and taxes**

Client shall pay the fees relating to the Services set forth in the applicable Ordering Document. All fees due under the Agreement are non-cancellable and the amounts paid to Hiptest non-refundable.

#### **14.2 Payment terms**

Except as otherwise stated in the Ordering Document, all invoices are in US Dollars and payable annually, in advance. Payments shall be made upon receipt of invoice. Hiptest shall be under no obligation to provide the Services under the initial Commercial Subscription until the related fees as stated in the Ordering Document have been paid in full.

#### **14.3 Adjustment**

An adjustment invoice shall be issued in advance, in the event that the Services are extended during the term of the Agreement, and this, in accordance with the rates set forth in the Ordering Document until the expiration of the then current yearly period; it being understood that such an adjustment shall be taken into account in the calculation of the amount of the fees for year N+1. For the avoidance of doubt, the level on the scope of the Services ordered under an Ordering Document may not be decreased during the term of the Agreement.

#### **14.4 Late payments**

Any amount not paid when due shall bear interest which shall be charged on a daily basis, at the rate of one and one-half percent (1.5%) calculated on a monthly basis for the period of lateness, or the highest rate allowable by applicable law, whichever is less. In addition, Hiptest may, at its sole option, withhold the performance of the Services five (5) days after electronic notice has remained without effect, without prejudice to Hiptest's rights and remedies. Client shall bear the costs and the consequences of such withholding of performance, notably the price increases and the delays in performance.

#### **15- Audit Rights**

Hiptest may audit or have an audit carried out, to ensure that Client's use of the Services complies with the terms and conditions of the Agreement. Client shall cooperate at its own costs with Hiptest or the third party appointed by Hiptest so that such audit can be carried out in the optimum conditions, it being agreed that Hiptest shall not interfere unreasonably with Client's business operations. Client shall pay within thirty (30) days of written notice any fees applicable to Client's use of the Services in excess of its rights, without prejudice to any damages that Hiptest could be entitled to.

The present clause shall remain in force one (1) year after termination of the Agreement for any cause whatsoever.

#### **16- Non-disclosure; references**

**16.1** Each Party shall consider as strictly confidential any Confidential Information, and agrees that it shall not give or disclose any Confidential Information to third parties. The Parties may disclose Confidential Information only to those persons allowed to receive such Confidential Information for the exclusive purpose of performing the Agreement and who agree to be bound by the provisions of the Agreement. Each Party undertakes to make such abovementioned persons sign a non-disclosure agreement containing the same level of obligation as the provisions of this section. All Confidential Information shall remain the disclosing Party's exclusive property.

In no event, shall the communication of any Confidential Information under the Agreement be construed as granting to the receiving Party - explicitly or implicitly - any right relating to the documents, materials, inventions to which Confidential Information refers to, unless otherwise stated in the Agreement. In particular, no

provision of the Agreement shall be construed as granting directly or indirectly a license to the receiving Party.

The obligation of non-disclosure as stated in this section, shall remain in force three (3) years from the date of end of the Agreement, for any reason whatsoever.

**16.2** Client agrees that Hiptest may identify Client as a recipient of the Services and use its name and logo as a business reference in sales presentations, marketing materials (notably on its websites and those of its affiliates) and press releases.

#### **17- Non Competition**

Client shall not develop, directly or indirectly, any competitive software or services during the term of the Commercial Subscription and for a period of twelve (12) months from the end of the Commercial Subscription for any reason whatsoever.

#### **18- Term, termination; end of the Agreement**

**18.1** The Agreement is effective as from the Effective Date. Unless earlier termination, the Free Trial shall remain in force for thirty (30) days, or until the starting date of the Commercial Subscription to the Services by Client, if such Commercial Subscription starts earlier.

Unless otherwise stated in the corresponding Ordering Document, the Commercial Subscription continues for an initial term of one (1) year unless earlier termination. As part of the Commercial Subscription, the Agreement is tacitly renewable for yearly periods, under the following conditions: at least sixty (60) days prior to the end of the ongoing contractual period, Hiptest may propose, in writing, new contractual terms and conditions to Client for the period to come. Unless notice of termination sent by either Party to the other Party under the terms of section 20.6, thirty (30) days at least before the end of the ongoing contractual period, the Agreement will be renewed for a yearly period under the new contractual conditions proposed by Hiptest or otherwise, pursuant to section 14.3, if applicable.

**18.2** In the event of a breach by either Party of its contractual obligations under the Agreement, provided that such breach is not cured within five (5) days in the case of the Free Trial, or fifteen (15) days in the case of the Commercial Subscription as from the receipt, or, failing that, the first presentation of the notice notifying such breach, the other Party may terminate the Agreement, by notice in accordance with section 20.6, without prejudice to any damages that such Party could be entitled to.

**18.3** Upon termination of the Agreement for any reason whatsoever, Connection Data are immediately removed and all rights to access and use the Services, including the Software, end. Client undertakes to pay immediately any and all amounts due to Hiptest under the Agreement as part of the Commercial Subscription, and this, without any compensation or deduction; given that the amounts paid to Hiptest under the Agreement are not refundable.

Client acknowledges that it may export its Data at anytime during the term of the Agreement, and that it is solely responsible for the recovery of the Data. Consequently, Hiptest does not have any obligation, of any nature whatsoever, to return the Data.

Client is informed that Data are hosted by Hiptest during twelve (12) months following the end of the applicable Commercial Subscription. During this twelve (12) month period, Client may recover Client's Data as part of a new Commercial Subscription relating to the corresponding Client's Project.

All the provisions which should survive the expiration or termination of the Agreement by nature shall remain applicable, for the term necessary to give them full force.

## **19- Compliance with laws**

Each Party, for its own part, undertakes to comply with all the applicable laws and regulations, in particular those related to data protection, privacy, and export and import. In particular, Client shall ensure that the use of the Services do not conflict with any law and/or regulation applicable to the export or re-export of technology from France and/or the United States of America, which Client is responsible for keeping informed of with the competent authorities. Client agrees that no data, information, software programs and/or materials resulting from the Services will be exported, directly or indirectly, in violation of any applicable law and/or regulation.

## **20- General provisions**

### **20.1 Relationship of the Parties**

The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency or employment relationship between the Parties. Each Party is responsible for paying its own employees, including employment related taxes and insurances.

### **20.2 Assignment and transfer**

Client shall not assign, dispose or otherwise transfer the Agreement - in whole or in part - to any third party, without the prior written consent of Hiptest. Hiptest may assign or transfer by any operation of law or otherwise, its rights and obligations under the Agreement to any third party, provided Client is informed of such assignment or transfer.

### **20.3 Waiver**

The waiver or the failure by either Party to claim a breach by the other Party of any of its obligations under the Agreement shall not be construed as a waiver of such obligation for the future. Any waiver shall only be effective subject to an amendment pursuant to the terms of section 20.5 hereunder.

### **20.4 Severability**

If any term of the Agreement is held to be illegal, void or unenforceable in whole or in part, as a result of any statutory or regulatory provision or after the decision of a competent court which has become final, such term shall be modified so as to be legal, valid and enforceable, and all the other provisions of the Agreement shall continue in full force and effect, unless the purpose of the Agreement is consequently affected.

### **20.5 Entire agreement; amendments**

The Agreement (including the Ordering Document) constitutes the entire agreement between the Parties at the Effective Date. It supersedes all prior or simultaneous agreements and understandings, whether oral or written, relating to the subject matter of this Agreement. The Agreement cannot be modified unless by written amendments signed by a duly authorized representative of each Party.

### **20.6 Notices**

All notices pertaining to the Agreement shall be in writing and either personally delivered or sent via postage prepaid certified mail which can be tracked, addressed to the other Party. All notices shall be effective upon delivery to the notice address.

### **20.7 Language**

The Agreement is in the English language only, which language shall be controlling in all respects. All communications and notices made or given pursuant to the Agreement shall be in the English language.

## **21- Governing law and jurisdiction**

The Agreement and any dispute relating hereto shall be governed and construed according to the laws of the State of California, USA without respect to its conflicts of laws principles. Each Party irrevocably submits to the sole and exclusive jurisdiction of the Courts in San Francisco, California, USA, for the resolution of any disputes relating to this Agreement.