

HITHRIVE INC.

Master Subscription Agreement

Effective Date: March 27, 2026

This Master Subscription Agreement (the "Agreement") constitutes a binding agreement governing the use of the Service (defined below) between the Customer and HiThrive Inc., a Delaware corporation ("HiThrive," "we," "us," or "our"). The terms of each Order Form are incorporated herein by reference. "You," "your," and "yours" refer to the Customer. The "Service" refers to the online software as a service ("Software") subscribed to by you and made available by us, including implementation and configuration services, Help Center and Library resources, and Customer Care and support services. We and you are each sometimes referred to herein as a "party."

The individual who initiates a subscription for a Customer is considered the "Administrator." The Administrator and other individuals using the Service under a Customer's subscription are referred to as "Users." By using the Service, the Customer acknowledges that it is legally bound by this Agreement. If the Customer does not agree to this Agreement, the Customer must terminate its subscription and ensure that its Users cease use of the Service.

By using the Service, the Customer and all Users also acknowledge and accept the provisions of our Privacy Policy available at www.hithrive.com/legal/privacy-policy.

1. ACCESS AND PROVISION OF THE SERVICE

- 1.1. **Access and Use.** Access to the Software is purchased on a subscription basis pursuant to a written order form ("Order Form") or, for free trials and self-serve subscriptions, via a click-through end user license agreement ("EULA") accepted through the HiThrive website or integrated third-party platform. Subject to this Agreement and any applicable Order Form or EULA, HiThrive grants you a non-exclusive, non-sublicensable, nontransferable right, during the Term, to access and use the Service solely for your internal business purposes and in accordance with any Documentation made available by HiThrive.
- 1.2. **Free Trial Access.** You may be eligible to use the Service for a free trial period before purchasing a paid subscription (a "Free Trial"). If you initiate a Free Trial by accepting a click-through EULA, this Agreement applies to your use of the Service during that period. At the end of the Free Trial, if you have not purchased a paid subscription and HiThrive has notified you that your account will convert to paid, you must cancel prior to expiration to avoid being charged. Free Trial access is provided "as-is" and is not subject to any service level agreement or performance warranties. HiThrive reserves the right to modify, suspend, or terminate the Free Trial at any time without liability.
- 1.3. **Administrator.** At the commencement of the Service, you will designate an Administrator. You are required to maintain and promptly update all account information so that it remains accurate, complete, and up to date at all times. HiThrive reserves the right to reset credentials in the event of a suspected security incident or breach of this Agreement.
- 1.4. **Authorized Users.** "Authorized User" means each of your employees, contractors, and other individuals authorized to use the Service on your behalf. Unless otherwise stated in the applicable Order Form, each Authorized User must be assigned a unique email address associated with your company's domain. User credentials may not be shared and may only be used to access the Software during one (1) concurrent login session. You are responsible for maintaining the confidentiality of all passwords and for Authorized Users' compliance with this Agreement.

- 1.5. **Eligibility.** The Administrator shall ensure that all Users are 18 years of age or older and are authorized by the Customer to use the Service. The Service is not directed to minors, and HiThrive relies on Administrators to ensure minors do not access the Service. HiThrive does not knowingly collect personal information from minors, and if HiThrive learns that it has inadvertently obtained such information in violation of applicable law, HiThrive will promptly delete it.
- 1.6. **Administrator Responsibilities.** It is the Administrator's obligation to ensure that all Users comply with the Use Restrictions set forth in Article 4 and with the Customer's own internal policies and legal obligations. HiThrive does not assume any responsibility for actions taken, or omissions by, Users when using the Service. Customer retains ultimate responsibility for all activity that occurs under its subscription, whether or not Customer or the Administrator authorized such activity.
- 1.7. **Technical Support.** Subject to this Agreement, HiThrive will use commercially reasonable efforts to make the Software available on a 24-by-7 basis in accordance with its maintenance and support practices, as updated from time to time.
- 1.8. **Updates and Modifications.** HiThrive reserves the right to update, upgrade, or otherwise modify the Software at any time with or without notice, provided that HiThrive will provide advance notice of anticipated downtime when possible. HiThrive may suspend provision of the Software at any time with reasonable notice, except in emergency cases relating to security or adverse impacts on the Service. HiThrive will use commercially reasonable efforts to minimize the duration of any suspension. In the event that any update materially diminishes your use of the Service, you may terminate the affected portion of the applicable Order Form and receive a prorated refund of prepaid Fees for the affected Service. HiThrive may share information about anticipated future enhancements or changes to the Service from time to time; however, Customer should not rely on any such statements when making purchasing decisions, and Customer's decision to subscribe should be based on the functionality available at the time of subscription.
- 1.9. **Third-Party Services.** The Service may allow you to connect to or interact with third-party service providers (e.g., HRIS or payroll platforms) for purposes permitted by the Service. HiThrive does not control such providers, and access may be implemented, suspended, or terminated in HiThrive's sole discretion. You are solely responsible for entering into and maintaining any agreement with such third parties. HiThrive is not responsible for third-party services, their compliance, accuracy, actions, omissions, or treatment of your Customer Content. Certain features of the Service enable Users to redeem points or allowances for gift cards, merchandise, experiences, and other rewards fulfilled by third-party suppliers ("Rewards Suppliers"). Customers and Users do not have a direct contractual relationship with Rewards Suppliers; all redemptions are facilitated through the HiThrive platform. HiThrive selects Rewards Suppliers using commercially reasonable care but does not guarantee the availability, quality, or timeliness of any specific reward. HiThrive's disclaimers and limitations of liability apply to Rewards Supplier fulfillment to the same extent they apply to the Service itself.
- 1.10. **HiThrive AI.** This Section 1.10 applies only if you access or use any HiThrive AI products or features. If you do not access or use HiThrive AI, this Section does not apply. As used herein: "HiThrive AI" means any artificial intelligence or machine learning technology made available through the Service that is capable of (a) generating new content (including by processing existing content), (b) analyzing data to surface insights or recommendations, or (c) suggesting actions or automating workflows, whether operated by HiThrive or a third-party provider. "Input" means any information, which may include Customer Content, that you provide to or through a HiThrive AI feature. "Output" means any responses, recommendations, summaries, insights, or other content generated by HiThrive AI and presented to you through the Service.
 - (a) **Use and Termination.** Access to HiThrive AI is limited to active Customers in good standing and their Authorized Users. Your use of HiThrive AI is optional; you may stop using any HiThrive AI feature at any time at your sole discretion. Your Administrator may disable any HiThrive AI feature from within your account at any time without affecting your access to the broader Service.

- (b) **Third-Party Technology and Data Routing.** HiThrive may use artificial intelligence or machine learning technology provided by a third party ("Third-Party Technology") to power some or all HiThrive AI features. By using a HiThrive AI feature, you permit and instruct HiThrive to disclose Input to the applicable Third-Party Technology provider as necessary to deliver that feature. The identity of Third-Party Technology provider(s), the nature of data transmitted, and applicable data residency information will be disclosed in HiThrive's DPA and subprocessor list (available upon written request to privacy@hithrive.com), which are incorporated by reference. HiThrive will provide at least ten (10) days' advance written notice before onboarding any new Third-Party Technology provider that will process Customer Content, except where a shorter timeframe is required for security, legal compliance, or service continuity, in which case HiThrive will provide notice as promptly as practicable. HiThrive does not permit Third-Party Technology providers to use Customer Content, including anonymized or aggregated data, to train, fine-tune, or improve their own AI or machine learning models. HiThrive may use anonymized, aggregated, non-identifiable usage data to improve and develop HiThrive AI features.
- (c) **Input and Output Ownership.** As between you and HiThrive, you retain all right, title, and interest in and to your Input. You own any Output that is unique to you, subject to the license grant in Section 2.2. Because HiThrive AI may generate the same or substantially similar Output for multiple customers, HiThrive does not warrant that Output will be unique or exclusive to you, and Output that is not unique to you does not constitute Customer Content. HiThrive retains all rights in and to the underlying models, algorithms, and Company Properties used to generate Output. You are solely responsible for evaluating the suitability of any Output before using it in any business process, decision, or communication.
- (d) **Employment and HR Decisions.** HiThrive AI features may surface insights, recommendations, or suggested actions related to employee recognition, engagement, rewards, or similar HR functions. You acknowledge and agree that: (i) all such Output is advisory in nature only and must not be used as the sole or primary basis for any employment decision, including but not limited to decisions relating to hiring, promotion, compensation, performance evaluation, discipline, or termination; (ii) you are solely responsible for applying appropriate human judgment and oversight to any Output before taking action; and (iii) you are solely responsible for ensuring that your use of HiThrive AI in connection with employment decisions complies with all applicable federal, state, and local laws, including laws governing automated decision-making tools in employment contexts (such as the New York City Automated Employment Decision Tools Law and any similar legislation). HiThrive shall not be liable for any employment decision, action, or claim arising from your use of or reliance on any Output.
- (e) **Risks and Limitations.** AI and machine learning technologies may produce Output that is inaccurate, incomplete, biased, or otherwise not suited to your needs, expectations, or legal and regulatory obligations. By using HiThrive AI, you acknowledge that you are solely responsible for: (i) developing internal policies governing appropriate use of AI tools and training Authorized Users on those policies; (ii) providing transparency to employees and obtaining all notices and consents required by applicable law in connection with your use of AI features; and (iii) implementing sufficient human oversight for all Output before acting upon it. HiThrive does not guarantee the generation of any Output and is not responsible for any inaccuracies, errors, biases, or limitations of the underlying algorithms, data, or Output.
- (f) **Acceptable Use of HiThrive AI.** You agree that you will not, and will not permit any Authorized User to, use HiThrive AI, Input, or Output: (i) to develop, train, or improve any competing AI product, service, feature, or machine learning model; (ii) to mislead any person that Output was solely human-generated; (iii) in a manner that discriminates against individuals on the basis of any characteristic protected by applicable federal, state, or local law; (iv) to generate synthetic employee data intended to deceive or manipulate; (v) to attempt to extract, reverse-engineer, or infer the underlying model weights, training data, system prompts, or architecture of any HiThrive AI feature; (vi) to conduct or facilitate any form of automated surveillance of employees without

their knowledge and without complying with all applicable laws; or (vii) in any other manner that violates applicable law, regulation, or the rights of any third party.

- (g) **Regulatory Compliance.** The regulatory landscape governing AI, automated decision-making, and algorithmic tools in the workplace is evolving rapidly. It is your sole responsibility to monitor and comply with all applicable laws and regulations governing your use of AI tools in connection with your workforce, including any bias auditing, impact assessment, employee notice, or consent requirements that may apply in your jurisdiction. HiThrive does not provide legal advice regarding AI regulatory compliance, and nothing in this Agreement or in any Output constitutes legal, compliance, or regulatory guidance. HiThrive will cooperate in good faith with reasonable requests to provide information about HiThrive AI features as may be necessary for you to conduct required impact assessments or regulatory audits, subject to HiThrive's confidentiality obligations.

- 1.11. **Privacy Compliance and Information Security.** Each party's performance hereunder will comply with all applicable privacy and data protection laws. Personal data relating to Users and persons whose information is submitted to the Service will be processed in accordance with our Privacy Policy and applicable laws. Our Data Processing Addendum ("DPA"), available at www.hithrive.com/legal/data-processing-addendum, is incorporated by reference and forms an integral part of this Agreement. HiThrive will maintain appropriate administrative, technical, and procedural safeguards designed to protect the security, confidentiality, and integrity of all Customer Content.

2. OWNERSHIP

- 2.1. **Company Properties.** As between you and HiThrive, the Service and all content therein (excluding Customer Content) (collectively, "Company Properties"), and all modifications, enhancements, upgrades, and updates thereto, together with all intellectual property rights therein, are the exclusive property of HiThrive and its suppliers. All rights not expressly granted herein are reserved. This Agreement does not grant you any right to copy, transmit, modify, create derivative works of, or reverse engineer the Company Properties.
- 2.2. **Customer Content.** As between you and HiThrive, you own the content, information, and data uploaded by you or transmitted in connection with your use of the Service (collectively, "Customer Content"). Customer Content includes any Input and any Output unique to you from HiThrive AI. You grant HiThrive a non-exclusive, worldwide, royalty-free license during the Term to use Customer Content solely as necessary to provide the Service. You are responsible for the accuracy, quality, and legality of Customer Content.
- 2.3. **Anonymized, Aggregated Data.** HiThrive automatically collects certain usage data and information relating to user actions on the platform. HiThrive may use such data for its own business purposes, including improving its products and services, analytics, and industry analysis. Such data does not contain text narrative that is part of Customer Content, Customer Confidential Information, or information that can identify a Customer, Authorized User, or any individual. HiThrive will not publish or distribute such data in a form that identifies or reasonably permits identification of any individual Customer, Authorized User, or any individual person.
- 2.4. **Feedback License.** You grant HiThrive a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its Software and Service any suggestion, enhancement request, recommendation, correction, or other feedback provided by you or your Authorized Users relating to the Service, without any obligation of compensation or confidentiality to you.

3. TERM AND TERMINATION

- 3.1. **Term.** The "Initial Subscription Term" means the period specified in the applicable Order Form or EULA, beginning on the Effective Date. "Renewal Term" means each successive subscription period following the Initial Subscription Term, as described in Section 3.2. Unless sooner terminated, this Agreement remains in effect for the Initial Subscription Term and any subsequent Renewal Term, coterminous with the latest Order Form. "Term" means the Initial Subscription Term together with

each Renewal Term. The maximum term for any complimentary Software product is the earlier of the renewal, expiration, or termination of a paid product included on the Order Form, and complimentary products may be terminated by HiThrive at any time for any reason.

- 3.2. **Automatic Renewal.** Unless an Order Form provides otherwise, subscriptions automatically renew for an additional period equal to the preceding term. Per-User pricing during any automatic Renewal Term is subject to adjustment as set forth in Section 6.1. You may prevent automatic renewal by providing at least thirty (30) days' written notice prior to the end of the then-current subscription term.
- 3.3. **Termination for Cause.** Either party may terminate this Agreement or any Order Form if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach. A material breach includes, without limitation, failure to make full and timely payment (not disputed in good faith) or commission of any act contemplated in Section 4. If you terminate due to HiThrive's breach, prepaid Fees for the Service not yet provided will be refunded on a prorated basis.
- 3.4. **Effect of Termination** Articles 2 (Ownership), 3 (Term and Termination), 4 (Customer Responsibilities) with respect to obligations that by their nature should survive termination, 5 (Confidentiality), 6 (Payment of Fees) with respect to Fees accrued prior to termination, 7 (Warranties and Disclaimer), 8 (Indemnification), 9 (Limitation of Liability), 10 (Dispute Resolution), 12 (General Terms), and 13 (Applicable Customer Terms) will survive any termination or expiration of this Agreement. Termination with respect to one Order Form does not terminate this Agreement with respect to any other Order Form.
- 3.5. **Return and Deletion of Customer Content.** You may request return of your Customer Content at any time during the Term. A downloadable file will be made available upon request or upon termination or expiration of your subscription. After effective termination or expiration, Customer Content is retained in inactive status for one hundred eighty (180) days, or such shorter period as may be required under an applicable Data Processing Addendum, Order Form, or applicable law, after which it is securely and permanently deleted. HiThrive reserves the right to adjust this retention period in compliance with applicable data privacy laws, and to retain certain data where required by law.

4. CUSTOMER RESPONSIBILITIES

- 4.1. **Use Restrictions.** You will not, and will not permit any Authorized User to, do any of the following:
(a) permit any unauthorized person or entity to access the Service; (b) use the Service other than in accordance with this Agreement, Documentation, and applicable law; (c) modify, adapt, alter, or copy the Service; (d) sell, resell, license, distribute, rent, or lease the Service, or include the Service in a service bureau or outsourcing offering; (e) use or access the Service to store or transmit harmful code, files, scripts, agents, or programs, or conduct penetration testing without HiThrive's express written permission; (f) use the Service to store or transmit deceptive, infringing, defamatory, or otherwise unlawful materials, or material in violation of third-party privacy rights or confidentiality obligations; (g) access the Service to build a competitive product or service, or for competitive benchmarking without HiThrive's prior written consent; (h) reverse engineer, decompile, or disassemble the Service, or attempt to derive the source code, underlying structure, or algorithms of the Service, except to the extent this restriction is prohibited by applicable law; (i) interfere with or disrupt the integrity or performance of the Company Properties; or (j) attempt to gain unauthorized access to the Company Properties. In addition, if you use any HiThrive AI feature, you may not use HiThrive AI, Input, or Output in any manner prohibited under Section 1.10 (HiThrive AI).
- 4.2. **Compliance with Law.** You will comply with all applicable laws and regulations in connection with your activities under this Agreement and your use of the Software and Service at all times during the Term. You acknowledge that it may be possible to configure or use the Service in ways that do not comply with applicable law, and it is your sole responsibility to ensure that your use and your Authorized Users' use complies with all applicable laws and regulations.

- 4.3. **Export Compliance.** You represent that you are not named on any United States government denied-party list. You agree not to export, re-export, or transfer, directly or indirectly, any technical data acquired from HiThrive in violation of United States export laws or regulations. You will not permit any Authorized User to access or use the Software in violation of applicable United States export laws or regulations, including users who are residents of embargoed countries or persons blocked or denied by the United States government.

5. CONFIDENTIALITY

- 5.1. **Definition.** Each party may have access to the other party's information, which will be deemed "Confidential Information" if identified as such by the disclosing party or if the information by its nature is normally and reasonably considered confidential, including information regarding product, methodology, research, customers, business plans, and any information that provides a competitive advantage. Your Confidential Information includes Customer Content. HiThrive's Confidential Information includes all non-public aspects of the Service and this Agreement and all Order Forms, including pricing.
- 5.2. **Standard of Care.** The receiving party will use the same degree of care as it uses to protect its own Confidential Information of a like nature, but not less than a reasonable degree of care, to (a) prevent use or copying of the disclosing party's Confidential Information for any purpose other than as permitted under this Agreement, and (b) prevent disclosure other than to employees or agents bound by similar confidentiality obligations with a need to access such information for purposes consistent with this Agreement. Confidential Information will remain the property of the disclosing party and will be returned or destroyed upon written request, with written certification provided upon completion.
- 5.3. **Exceptions.** Information will not be deemed Confidential Information if it: (i) becomes generally known to the public through no fault of the receiving party; (ii) is or becomes known to the receiving party without restriction from a third party other than as a result of breach of contract or wrongful act; or (iii) is independently developed by the receiving party without reliance on the disclosing party's Confidential Information. Confidential Information may be disclosed to the extent required by applicable law or court order, provided the disclosing party is given reasonable advance notice of such disclosure.

6. PAYMENT OF FEES

- 6.1. **Fees.** You will pay HiThrive the fees set forth in the online checkout or applicable Order Form (other than fees disputed in good faith) in accordance with the terms therein (the "Fees"). All Fees are nonrefundable except as expressly provided herein. HiThrive may increase Fees in effect at the start of any Renewal Term by providing at least forty-five (45) days' advance written notice. Fee increases will not exceed five percent (5%) above the prior Renewal Term rate for the same products or services unless otherwise agreed in writing.
- 6.2. **Billing Cadence.** Unless otherwise specified in the applicable Order Form, Fees will be invoiced on an annual basis at the commencement of the applicable subscription term or Renewal Term. For monthly billing arrangements, Fees will be invoiced on a monthly basis on or near the calendar day corresponding to commencement of your subscription. All invoices are due and payable within thirty (30) days of the invoice date. All Fees are payable in United States Dollars unless otherwise specified in the Order Form.
- 6.3. **User Count True-Ups.** If your subscription is priced on a per-User basis, your initial Fee will be based on the number of Users identified in the Order Form or at checkout. HiThrive will perform user count reconciliations no more frequently than once per calendar month. If the actual number of Authorized Users exceeds the contracted user count during any billing period, HiThrive will invoice you for the additional Users at the applicable per-User rate, prorated for the remainder of the current subscription term.

- 6.4. **Payment Methods.** HiThrive accepts debit cards, credit cards, ACH electronic transfers, and other payment methods designated by HiThrive from time to time. If you pay by credit card, you authorize HiThrive and its third-party payment processors to collect all due and payable Fees using the payment method on file. You must keep payment method and billing information current at all times. You agree that HiThrive may retain and share payment information with financial institutions and payment processing firms (including Stripe) as necessary to process payment.
- 6.5. **Late Payment.** If you fail to make payments (not disputed in good faith) when due, and after continued non-payment for fifteen (15) days following written notice and an opportunity to cure, HiThrive may suspend the Service until payment is received. Delinquent payments will bear interest at the rate of 1% per month or the highest rate permitted by applicable law, whichever is less. If collection efforts are unsuccessful and a third party is required to collect undisputed Fees, you agree to bear the reasonable costs of such collection, including reasonable attorneys' fees.
- 6.6. **Payment Disputes.** You may withhold from payment any amount disputed by you reasonably and in good faith, provided that you: (a) notify HiThrive in writing within the payment period associated with the disputed invoice, specifying the amount in dispute and the basis for the dispute in sufficient detail; (b) pay all undisputed amounts in full by the applicable due date; and (c) work diligently with HiThrive to resolve the dispute promptly. Any amounts determined to be payable following resolution of a dispute — whether by agreement or otherwise — are due within fifteen (15) days of such resolution. HiThrive reserves all rights and remedies with respect to any invoice amount not disputed in accordance with this Section. The right to withhold under this Section does not apply to amounts that have previously been paid and for which you subsequently seek a reversal or chargeback.
- 6.7. **Cancellation.** You may cancel your subscription at any time. Except as otherwise provided in this Agreement, any cancellation will be effective at the end of the then-current subscription term. To cancel, contact HiThrive at support@hithrive.com. If you are using the Service during a Free Trial and HiThrive has notified you that your account will convert to a paid subscription, you must cancel prior to the end of the trial period to avoid being charged.
- 6.8. **Taxes.** Fees do not include any taxes, levies, duties, or other governmental assessments of any nature, including value-added, sales, use, or withholding taxes (collectively, "Taxes"). You are responsible for the payment of all applicable Taxes other than taxes assessable against HiThrive based on its income, property, franchise, or employment. If HiThrive has a legal obligation to collect and remit Taxes for which you are responsible, HiThrive will invoice you for such Taxes unless you provide a valid tax exemption certificate.
- 6.9. **Redemption Fund Handling.** If your subscription includes a pre-funded redemption balance, HiThrive will apply those funds solely toward redemptions made by your Authorized Users in accordance with your program configuration. Upon expiration or termination of your subscription for any reason, HiThrive will return any unused redemption balance to you, net of any amounts then outstanding under this Agreement, within thirty (30) days of the effective date of expiration or termination.

7. WARRANTIES AND DISCLAIMER

- 7.1. **Mutual Representations.** Each party represents and warrants that: (a) it has validly entered into this Agreement, has the authority to do so, and is not subject to any agreements that conflict with the undertakings provided hereunder; (b) it is not named on any government list of prohibited or restricted parties and is not located in, or a national of, a country subject to a government embargo or designated as a terrorist-supporting country; and (c) it will comply, and in the case of Customer will ensure its Authorized Users comply, with all applicable anti-money laundering, anti-corruption, anti-bribery, and counter-terrorist financing laws, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and any similar applicable legislation, in connection with its activities under this Agreement and its use of the Service.
- 7.2. **HiThrive Warranties.** HiThrive warrants that during the Term: (a) it owns, or otherwise properly licenses, the Software and Service and has the full power and authority to license the same to you; (b)

it will provide and perform all Software and Service in a professional and workmanlike manner in accordance with prevailing industry standards for similar enterprise software as a service; and (c) all Software, Service, and Company Properties provided to you under this Agreement will comply with applicable law. To assert a breach of any warranty set forth in this Section 7.2, you must notify HiThrive in writing within thirty (30) days of discovering the breach, including a detailed description of the claimed deficiency. If HiThrive receives a valid and timely warranty claim, it will use commercially reasonable efforts to remedy the breach. The remedies in this Section 7.2 are your sole and exclusive remedies for any breach of these warranties.

- 7.3. **Disclaimers.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SERVICE, SOFTWARE, AND ALL COMPANY PROPERTIES ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS," AND HITHRIVE AND ITS AFFILIATES, SUBCONTRACTORS, AND REWARDS SUPPLIERS SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. HITHRIVE DOES NOT WARRANT THAT THE SERVICE, SOFTWARE, OR COMPANY PROPERTIES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT THE RESULTS OBTAINED FROM USE OF THE SERVICE WILL BE ACCURATE, RELIABLE, OR MEET YOUR REQUIREMENTS, OR THAT ALL DEFECTS OR ERRORS WILL BE CORRECTED.

HITHRIVE DOES NOT WARRANT THAT HITHRIVE AI WILL BE ERROR-FREE OR UNINTERRUPTED, NOR DOES HITHRIVE MAKE ANY WARRANTY REGARDING THE RESULTS OBTAINABLE FROM USING HITHRIVE AI OR THE ACCURACY OR SUITABILITY OF ANY INFORMATION, OUTPUT, OR ADVICE OBTAINED THROUGH HITHRIVE AI. ANY OUTPUT OBTAINED THROUGH HITHRIVE AI IS AT YOUR SOLE RISK. YOU SHOULD NOT RELY ON FACTUAL ASSERTIONS IN OUTPUT WITHOUT INDEPENDENT FACT-CHECKING. HITHRIVE IS NOT LIABLE FOR ANY CLAIMS ARISING FROM ANY OUTPUT PROVIDED BY HITHRIVE AI.

HITHRIVE DOES NOT PROVIDE LEGAL, TAX, BENEFIT, ACCOUNTING, OR INVESTMENT ADVICE IN CONNECTION WITH THE SERVICE. THE SOFTWARE AND SERVICE ARE NOT INTENDED FOR THE STORAGE, COLLECTION, OR MAINTENANCE OF PROTECTED HEALTH INFORMATION ("PHI") AS DEFINED BY HIPAA. HITHRIVE IS NOT A COVERED ENTITY OR BUSINESS ASSOCIATE UNDER HIPAA. COMPLIMENTARY SERVICES ARE ACCEPTED AS-IS AND ARE NOT SUBJECT TO ANY SERVICE LEVEL AGREEMENT OR PRODUCT PERFORMANCE WARRANTIES.

- 7.4. **Customer Warranties.** You warrant that: (a) you own, or otherwise properly license, the Customer Content and have all necessary rights and permissions to use it within the Software and Service; (b) you have the full power and authority to make the license grants hereunder; (c) your use of the Software and Service and any Customer Content provided to HiThrive will comply with applicable law; and (d) Customer Content provided to HiThrive is accurate and complete to the best of your knowledge.

8. INDEMNIFICATION

- 8.1. **Indemnification by HiThrive.** HiThrive will defend, indemnify, and hold harmless you and your officers, directors, employees, and agents from and against all claims, damages, losses, and external expenses (including reasonable attorneys' fees), except where caused in whole or in part by your use of the Service in violation of this Agreement, arising out of any claim by any third party that: (a) alleges that the Service or Software (as made available to you for use in accordance with this Agreement) infringes or misappropriates any third-party intellectual property rights under the Uniform Trade Secrets Act, U.S. patent, copyright, trademark, or other applicable intellectual property law; or (b) is based on or alleges HiThrive's violation of applicable laws. HiThrive will have no obligation under clause (a) above to the extent the claim is based on: (i) use of the Service in combination with hardware, software, data, or content not provided by HiThrive; (ii) Customer Content; or (iii) use of the Service other than in accordance with this Agreement and Documentation. In response to any actual or threatened claim under clause (a), HiThrive may, at its option and expense: (x) procure the right to continue providing

the affected Service; (y) modify or replace the affected Service so as to make it non-infringing while remaining materially equivalent in functionality; or (z) if neither (x) nor (y) is commercially reasonable, terminate the affected portion of this Agreement upon written notice and provide a prorated refund of prepaid Fees for the terminated period. This Section 8.1 states your sole and exclusive remedy, and HiThrive's entire liability, with respect to any claim of intellectual property infringement arising out of or related to the Service.

8.2. **Indemnification by Customer.** You will defend, indemnify, and hold harmless HiThrive and its officers, directors, employees, and agents from and against all claims, damages, losses, and external expenses (including reasonable attorneys' fees) arising out of any claim by any third party based on or related to: (a) your use of the Software or Service in violation of this Agreement; (b) your Customer Content; or (c) your actual or alleged violation of applicable law or the rights of any third party, including any applicable privacy right.

8.3. **Indemnification Procedures.** The party seeking indemnification ("Indemnified Party") will provide prompt written notice to the indemnifying party upon learning of the claim. The indemnifying party will have the right to assume control of the defense and settlement, provided that the prior written agreement of the Indemnified Party is required for any settlement that does not include a full release or that requires any payment or admission of wrongdoing by the Indemnified Party.

9. LIMITATION OF LIABILITY

EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ITS AFFILIATES, SUBCONTRACTORS, OR REWARDS SUPPLIERS WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF DATA, USE OR PROFIT, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR BUSINESS INTERRUPTION) ARISING OUT OF OR RELATING TO THE SERVICE OR THESE TERMS, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE SERVICE OR THESE TERMS WILL NOT EXCEED AN AMOUNT EQUAL TO THE SUBSCRIPTION FEES ACTUALLY PAID BY YOU DURING THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE INITIAL EVENT CAUSING OR RESULTING IN SUCH LIABILITY, OR ONE HUNDRED DOLLARS (\$100) IF YOU HAVE HAD NO PAYMENT OBLIGATIONS TO HITHRIVE. IF THE FOREGOING LIMITATION IS DEEMED INEFFECTIVE AS A MATTER OF LAW, IT WILL BE CONSTRUED TO LIMIT LIABILITY TO THE MINIMUM AMOUNT CONSISTENT WITH APPLICABLE LAW WHILE STILL GIVING EFFECT TO THE INTENTION OF THIS CLAUSE.

NOTWITHSTANDING THE FOREGOING, THE CONSEQUENTIAL DAMAGES WAIVER AND LIABILITY CAP SET FORTH IN THIS ARTICLE 9 WILL NOT APPLY TO, AND THERE IS NO LIMITATION ON LIABILITY FOR: (A) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 8; (B) EITHER PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (C) CUSTOMER'S FAILURE TO PAY ANY AMOUNTS DUE UNDER THESE TERMS; OR (D) CUSTOMER'S BREACH OF THE USE RESTRICTIONS IN ARTICLE 4 (COLLECTIVELY, "EXCLUDED CLAIMS"). FOR THE AVOIDANCE OF DOUBT, THE EXCLUDED CLAIMS ARE NOT SUBJECT TO THE LIMITATIONS OF THIS ARTICLE 9 AND EACH PARTY'S FULL LIABILITY FOR EXCLUDED CLAIMS IS PRESERVED.

EACH PARTY ACKNOWLEDGES THAT IT HAS ENTERED INTO THESE TERMS IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY, WHICH FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

10. DISPUTE RESOLUTION

10.1. **Good Faith Negotiation.** The parties will attempt in good faith to resolve any dispute arising out of or relating to the Service or this Agreement through direct negotiation before initiating arbitration. Either party may initiate this process by providing written notice to the other party describing the dispute in reasonable detail.

10.2. **Binding Arbitration.** Any dispute not resolved through negotiation under Section 10.1 will be resolved by binding arbitration administered by the American Arbitration Association under its Commercial

Arbitration Rules, except to the extent those rules are inconsistent with the provisions set forth herein. Such dispute will be heard in New York County, New York, by one neutral arbitrator. The arbitrator will have authority to award any remedy available at law or in equity, including compensatory damages, injunctive relief, and attorneys' fees where expressly provided for under this Agreement, but will not have authority to consolidate actions or claims or to award punitive or exemplary damages. The award rendered will be final and binding, and judgment may be entered in any court having jurisdiction. The existence, conduct, and content of such arbitration will be kept confidential, except as may be required by law, governmental authority, or for financial reporting purposes.

- 10.3. **Limitations Period.** Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement or the use of the Service must be filed or otherwise commenced within two (2) years after such claim or cause of action arose, or be forever barred.
- 10.4. **Injunctive Relief.** Notwithstanding any other provision hereof, either party may seek temporary or permanent injunctive relief to enforce its rights with respect to the protection of its Confidential Information or intellectual property, without the requirement of a bond or security. Each party acknowledges that any breach of its obligations with respect to Confidential Information or intellectual property rights might constitute immediate, irreparable harm for which monetary damages would be an inadequate remedy.

11. AFFILIATES

- 11.1. **Affiliate Use Rights.** Each Order Form and this Agreement are entered into for the benefit of the Customer and its Affiliates. Customer's Affiliates are entitled to use the Service subject to their compliance with this Agreement. Customer retains ultimate liability for the acts and omissions of its Affiliates in relation to the Service and this Agreement, including payment obligations. "Affiliate" means any entity that a party directly or indirectly controls, or is controlled by, where control means ownership of more than fifty percent (50%) of the voting interests.

12. GENERAL TERMS

- 12.1. **Entire Agreement.** This Agreement, together with any applicable Order Form and DPA, constitutes the entire agreement between HiThrive and you regarding the Service and supersedes all prior oral or written understandings or agreements relating to such subject matter. To the extent of any conflict between this Agreement and any Order Form, the terms of the Order Form will control. If there is any conflict or inconsistency between the Privacy Policy or this Agreement and the DPA, the terms of the DPA will control with respect to the processing of personal data. No terms or conditions stated in a Customer purchase order, vendor onboarding process, or other Customer order documentation (excluding a HiThrive-accepted Order Form) will be incorporated into or form any part of this Agreement.
- 12.2. **Amendments.** (a) Mutual Amendments. No amendment of this Agreement will be effective unless contained in a written agreement signed by both parties that specifically purports to amend this Agreement. (b) Unilateral Modifications. HiThrive may update or modify this Agreement from time to time. For material changes, HiThrive will provide at least thirty (30) days' prior written notice to the email address associated with Customer's account. Non-material changes (including clarifications, restatements, and changes required by applicable law) will be effective upon posting to HiThrive's website. Customer's continued use of the Service following the effective date of any modification constitutes acceptance of the updated Agreement. If Customer does not agree to a material modification, Customer may notify HiThrive in writing prior to the effective date of the modification. The parties will then have thirty (30) days to discuss Customer's concerns in good faith, during which HiThrive will consider in good faith whether to remediate or withdraw the disputed modification. If, following that period, the modification remains in effect and the parties have been unable to reach resolution, Customer may terminate the affected portion of the Service upon written notice, in which case HiThrive will provide a prorated refund of any prepaid Fees covering the period after termination.

- 12.3. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 12.4. **Assignment.** Neither party may assign or otherwise transfer this Agreement or any rights or obligations hereunder without the written consent of the other party, except that either party may, without such consent, assign or transfer this Agreement to an Affiliate or a purchaser of all or substantially all of its assets, or to a successor organization by merger, consolidation, change of control, or otherwise. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.
- 12.5. **Notices.** All notices must be in writing. Routine operational communications may be delivered by email: to you at the email address in your Customer Information, or to HiThrive at support@hithrive.com. Formal legal notices (including notices of breach, termination, or indemnification claims) must be delivered either by email to legal@hithrive.com, or by nationally recognized overnight courier or certified mail (return receipt requested), postage prepaid, to HiThrive Inc., 8 The Green #4000, Dover, DE 19901, Attn: Legal. Notices sent by email are deemed received on the date transmitted if no delivery failure notification is received within 24 hours. Notices sent by courier or certified mail are deemed received upon confirmed delivery. HiThrive may also provide routine operational notices through the electronic messaging system included in the Service.
- 12.6. **Waiver.** Any provision of this Agreement may be waived only in a writing signed by the party to be bound thereby. Any waiver or failure to enforce any provision on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 12.7. **Governing Law.** This Agreement and any action related thereto will be governed and interpreted under the laws of the State of New York, ~~consistent with the Federal Arbitration Act~~, without giving effect to any principles providing for application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 12.8. **Force Majeure.** Neither party will be liable for any delay or failure to perform its obligations hereunder (other than any obligation to make a payment) resulting from any cause beyond such party's reasonable control, including pandemic, weather, fire, floods, labor disputes, riots or civil disturbances, acts of government, and acts of war or terrorism, provided that the delay or failure to perform is beyond the control and without the fault or negligence of the party claiming excusable delay, and that such party cures the issue as soon as practicable after the occurrence of the unforeseen event.
- 12.9. **Public Announcements.** You grant HiThrive the right to use your name, logo, trademarks, and/or trade names in press releases, webpages, product brochures, and financial reports indicating that you are a customer of HiThrive. All other public statements or releases will require the mutual written consent of the parties.
- 12.10. **Relationship of Parties.** This Agreement does not create any partnership, joint venture, or agency relationship between the parties. Neither party is vested with any power or right to bind the other party contractually or to act on behalf of the other party as a broker, agent, or otherwise.

13. APPLICABLE CUSTOMER TERMS

- 13.1. **U.S. Government Customers.** If Customer is a United States government or public entity (or the Service is used for the United States government): (a) the Service is a "commercial item" as defined at 48 C.F.R. § 2.101 and constitutes "commercial computer software" and "commercial computer software documentation" as used in 48 C.F.R. § 12.212; (b) the sections governing Renewal, Indemnification, and Dispute Resolution are waived to the extent inconsistent with federal law; and (c) HiThrive agrees not to use Customer's seals, trademarks, logos, or trade names in any manner stating or implying endorsement by any element of the United States government.

Commented [AK1]: Drafting note: if binding arbitration in the Dispute Resolution article is removed in favor of court jurisdiction (as in some enterprise deals), also strike "consistent with the Federal Arbitration Act" from this sentence and re-verify the survival list. -AK

- 13.2. **State or Local Government Customers.** If Customer is a state or local government acting in its official capacity, the sections governing Renewal, Indemnification, and Dispute Resolution will not apply to the extent Customer's jurisdiction's laws prohibit Customer from accepting those terms.
- 13.3. **HiThrive Not a Government Contractor.** Notwithstanding any provision in this Article 13, HiThrive shall not be considered a government contractor for any federal, state, local, or foreign government.
- 13.4. **Healthcare Customers.** Unless Customer has entered into a separate written Business Associate Agreement with HiThrive, Customer acknowledges that HiThrive is not a "Business Associate" as defined in HIPAA, and that the Service is not HIPAA compliant. Customer must not use, disclose, transmit, or otherwise process any PHI through the Service. HiThrive has no liability for PHI received from Customer.

14. **CONTACT INFORMATION**

If you have any questions about this Agreement or the Service, please contact HiThrive at:

HiThrive Inc.

8 The Green #4000, Dover, DE 19901

Email: support@hithrive.com

Phone: 646-484-8574

Website: www.hithrive.com