

Standard Terms & Conditions

IMPORTANT - READ CAREFULLY: These Standard Terms & Conditions, including any supplemental terms published from time to time (collectively, “**Terms & Conditions**”), constitute a material part of the Master RFID Agreement for Equipment, Services, Software License and Maintenance and/or the Positek RFID Quote (as applicable, the “**RFID Agreement**”) to which they are attached. To the extent there is a conflict between the terms of the RFID Agreement or the Quote and these Terms & Conditions, the terms of the RFID Agreement shall control. Capitalized terms used and not otherwise defined in these Terms & Conditions have the meanings ascribed to such terms in Section 15 below.

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Section 1. Applicability

These Terms & Conditions apply to the purchase, license or acquisition by the customer (“**Customer**”) from Positek RFID (“**Supplier**”) of (a) hardware, equipment and supplies manufactured by Supplier or a third party (“**Hardware**”), (b) software developed by Supplier or a third party (“**Software**”), (c) Cloud Service (Cloud Service together with Software and Hardware is referred to herein as “**Products**”), (d) installation and implementation services to accomplish a fully integrated RFID system comprised of Hardware, Software and/or Cloud Service, and Documentation (“**System**”), (e) maintenance services with respect to Software (“**Maintenance Services**”), and (f) other services provided by Supplier (“**Other Services**”, and together with Maintenance Services and other tasks, functions and responsibilities described in the RFID Agreement which are the responsibility of Supplier, the “**Services**”), each of which is identified in the RFID Agreement or any accompanying proposal, order acknowledgement, or invoice (the “**Sales Confirmation**”). The RFID Agreement, together with these Terms & Conditions and the Sales Confirmation comprise the entire agreement between the parties (collectively, this “**Agreement**”), except as may be hereafter modified by Supplier in writing and signed by Supplier’s representative. Customer accepts these Terms & Conditions by signing and returning the RFID Agreement and/or the Sales Confirmation, or by accepting or paying for the Products and/or Services. No additional or different terms, conditions or warranties other than those identified in the Agreement and no agreement or understanding, oral or written, in any way purporting to modify these Terms & Conditions, whether contained in Customer’s purchase order or elsewhere, shall be binding on Supplier unless hereafter made in writing, signed by Supplier’s authorized representative, and specifically referencing these Terms & Conditions and stating that it modifies them. Customer is hereby notified of Supplier’s express rejection of any terms inconsistent with these Terms & Conditions or to any other terms proposed by Customer. Neither Supplier’s subsequent lack of objection to any terms, nor the delivery of the Products or Services, shall constitute an agreement by Supplier to any such terms. Trade custom, trade usage and past performance are superseded by these Terms & Conditions and shall not be used to interpret these Terms & Conditions.

Section 2. Prices

- (a) Prices for Products and Services covered by this Agreement are set forth in the Sales Confirmation. All prices are based on the number of Products purchased and the Services to be performed as set forth in the Sales Confirmation. If the actual number of Products purchased or Services to be performed varies from that set forth in the Sales Confirmation, Supplier reserves the right to change the pricing. If this Agreement extends beyond six (6) months, Supplier may increase prices upon notice to Customer. The foregoing notwithstanding, prices for Hardware may be adjusted by Supplier at any time prior to shipment or installation, as applicable, and regardless of the acceptance or issuance of a Sales Confirmation, to reflect any increase in Supplier’s cost of raw materials, components (e.g., steel, aluminum, electronic components), inability to secure such Hardware, changes in law, labor, taxes, duties, tariffs or quotas, acts of Government, any similar charges, or to cover any extra, unforeseen and unusual cost elements. Prices or fees for Services and any Usage Rights provided on a subscription or SaaS basis prior to the beginning of each applicable Renewal Term. All price or fee increases shall be effective upon written notice to Customer.
- (b) Customer shall pay all applicable taxes (including Value Added Tax, sales taxes, use taxes, duties and any other taxes), rates or governmental levies that are payable in connection with the sale or supply of Products and/or Services under this

Agreement, excluding taxes on Supplier's income. For international transactions, payments shall be made free of any tax withholding. If any tax withholding is due on payments under this Agreement, the tax shall be an additional cost for Customer who shall promptly provide Supplier with a certificate of taxes paid. If possible, Supplier will bill taxes as a separate item on the invoice presented to Customer. In the event Supplier is required to pay any such taxes or other charges, Customer shall reimburse Supplier therefor on demand. If any exemption certificate presented by Customer is held to be invalid, then Customer will immediately pay Supplier the amount of the tax and any penalties and interest related thereto. Customer shall pay transportation, customs, duties and freight charges from Supplier's point of shipment specified in the Sales Confirmation.

Section 3. Payment Terms

- (a) Unless otherwise provided in the Sales Confirmation or Supplier's express written agreement, Supplier shall invoice Customer as follows:
 - (i) for Hardware (except for Supplies), Software, Cloud Service, and Services to be delivered to Customer as part of planning, designing and delivering a new System, Supplier shall invoice Customer (A) fifty percent (50%) of the total price of the System at the time Customer accepts this Agreement, (B) forty percent (40%) of the total price of the System when the Hardware is ready to ship (provided that if the Hardware is to be shipped in installments, Supplier may invoice Customer a pro rata share of the total price for each installment), and (C) ten percent (10%) when the System is installed and placed in service;
 - (ii) for Hardware (except for Supplies) to be delivered on a stand-alone basis, Supplier shall invoice Customer (A) fifty percent (50%) of the price at the time Customer accepts this Agreement, and (B) fifty (50%) of the price when the Hardware is ready to ship (provided that if the Hardware is to be shipped in installments, Supplier may invoice Customer a pro rata share of the total price for each installment);
 - (iii) for Software and Cloud Service to be delivered on a stand-alone basis, Supplier shall invoice Customer for the applicable initial license or usage fee at the time Customer accepts this Agreement and, if applicable, for each recurring license or usage fee thirty (30) days prior to the applicable due date;
 - (iv) for Services performed for Customer other than as part of a new System, Supplier shall invoice Customer for the Services in advance at the time Customer accepts this Agreement and on the first of the month, each month thereafter, or in accordance with the invoice frequency schedule set forth in the Sales Confirmation, provided that the first invoice of new Services will be immediately due and payable before Supplier commences the work; and
 - (v) for Supplies, Supplier shall invoice Customer for the total price at the time Customer accepts this Agreement.
- (b) All payments are due, and Customer shall make payment, without deduction or setoff, in United States Dollars, upon receipt of the invoice. Where Supplier extends credit to Customer, terms of payment shall be net thirty (30) days from the invoice date. The amount of credit or terms of payment may be changed, or credit withdrawn, at any time by Supplier for good cause, as determined in Supplier's sole discretion. In the case of Hardware, Customer acknowledges that Supplier will not commence work, including, without limitation, ordering products or components, until the first invoice is paid in full. In the case of Software and Cloud Service, Customer acknowledges that Supplier will not make the Software and/or Cloud Service accessible for Customer's use until the first invoice is paid in full. If applicable, Customer hereby authorizes Supplier to use Customer's credit card information or Customer's ACH authorization, as provided on the Sales Confirmation or otherwise, to accept payment for all amounts due, including, without limitation, all recurring usage fees.
- (c) If Customer fails to make payment when due and the failure continues for a period of ten (10) days after Supplier notifies Customer in writing of the failure, in addition to any other rights or remedies that it may have at law, in equity or otherwise under this Agreement, Supplier may refuse to perform any further obligations and may suspend or terminate the Usage Rights granted hereunder (including Customer's access to Software and/or Cloud Service) or the supply of Products or Services. Supplier may charge Customer interest on overdue amounts from the date the amount became due at the lesser of the rate of one and one-half percent (1-1/2%) per month or the maximum interest rate permitted by applicable law. In addition, (i) if collection efforts related to non-payment or late payment of Supplier invoices proves necessary, Customer agrees to pay all fees incurred by that process, including reasonable attorney fees and court costs, and (ii) if Supplier incurs exchange rate losses due to Customer's failure to pay when payments are due, Supplier shall be entitled to equivalent compensation from Customer for such losses. The rights set forth in this clause (c) shall be in addition to, and not in lieu of, any other rights and remedies available under this Agreement or at law or in equity.
- (d) In the event Buyer disputes any invoice or portion thereof, it shall notify Supplier in writing within thirty (30) days of receipt of said invoice, detail the reason for the dispute, and pay all undisputed amounts. All charges not timely disputed in writing shall be deemed to be undisputed and shall be due and payable as set forth above.

Section 4. Title & Risk of Loss

Unless otherwise specified in the Sales Confirmation, title and risk of loss with respect to Hardware shall pass to Customer upon delivery to the common carrier by Supplier. As collateral security for the payment of the purchase price of the Hardware, Customer hereby grants to Supplier a lien on and security interest in and to all of the right, title and interest of Customer in, to and under the Hardware, wherever located, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the Commonwealth of Pennsylvania.

Section 5. System Installation & Implementation

- (a) In the event that Customer desires for Supplier to perform installation and implementation services with respect to a System in order to provide a fully integrated solution, such Services will be performed at the Site by Supplier, or an authorized representative of Supplier, in accordance with the terms of this Agreement. Unless otherwise specified in the Sales Confirmation, Customer shall be responsible, at its own expense, for (i) furnishing a dedicated power line from the Site's electrical power source directly to the System in accordance with Supplier's requirements and specifications (including all labor and materials related thereto), (ii) cable installation, and (iii) if applicable, remote access to Customer's server via the Internet. Customer's responsibilities shall be completed, and the Site shall be made available to Supplier, by the date scheduled for the installation. Following installation, Customer shall maintain the Site's electrical, mechanical and environmental conditions in accordance with Supplier's requirements and specifications.
- (b) In the event that either (i) the Site is not available on the scheduled installation date in accordance with Section 5(a), (ii) Customer reschedules the installation date on less than two weeks' written notice to Supplier, or (iii) Customer's personnel are not available on the date scheduled for training, then Customer shall pay or reimburse Supplier for (A) all of Supplier's costs incurred in changing or canceling travel or lodging expenses and (B) the time of Supplier's installation or training representatives estimated for the original date at fifty percent (50%) of Supplier's standard rate.
- (c) Supplier will not be responsible for any System implementation or operation issues arising out of or relating to any hardware (including RFID Couplers/Readers and RFID Tags) or third-party software not provided or expressly recommended by Supplier. Without limiting the generality of the foregoing, at Customer's request, Supplier will specify the minimum approved hardware and third-party software configuration required in order to operate the System.

Section 6. Usage Rights & Restrictions

- (a) Supplier hereby grants to Customer a limited, non-exclusive and non-transferable (except regarding Software and Cloud Service, as permitted under the Positek RFID Software and Cloud Service Transfer and Re-Use Policy) (i) license to use the Software and (ii) right to use the Cloud Services, both as acquired from Supplier or a Positek Partner, for Customer's internal use in accordance with and for the Usage Term and scope (if any) specified in any applicable Sales Confirmation (collectively, "**Usage Rights**"). Usage Rights shall become effective for the applicable Initial Term on the Delivery Date. At the end of the Initial Term and each one-year anniversary thereafter, the Usage Rights shall automatically renew for successive Renewal Terms at Supplier's then current rates; provided, that either party may elect to not renew the Usage Rights by providing written notice to the other party at least 30 days prior to the end of the Initial Term or the then current Renewal Term. For Software licensed on a SaaS basis and Cloud Service, Usage Rights are limited to a right to access and use the Software and Cloud Service via a browser across the Internet.
- (b) Software and Cloud Service may only be used in accordance with the terms and conditions of the applicable end user license agreement ("**EULA**") and any specific terms and conditions applicable to specific Product ("**Product Specific Terms**"). Without limiting the foregoing, Customer shall not copy or reproduce (in whole or in part) any Software or Documentation, except that Customer may make one back-up copy of any on premise application Software (Software to be installed and operated from Customer's in-house server) for use solely in the event of damage or destruction of the original. The original and all copies of the Software and Documentation are and shall remain the sole property of Supplier; by execution of this Agreement, Customer acquires a right to use and/or access Software, Cloud Service and Documentation but does not acquire title or any ownership interest therein. Customer shall not reverse engineer, decompile or otherwise disassemble Software unless, and only to the extent, applicable law expressly requires that Customer have such rights. Software, Cloud Service and/or the System may contain devices or routines designed to prevent access or use of the Software and/or Cloud Service other than in accordance with this Agreement.
- (c) In the event that Customer fails to timely pay any usage or other fees in respect of Software and/or Cloud Service when due, then the applicable Usage Rights shall automatically expire without notice and be of no further force or effect.

Section 7. *Software Maintenance*

- (a) In the event Customer licenses Software on a subscription or SaaS basis, or otherwise purchases Software Maintenance (as defined below), Supplier agrees to provide to Customer the services specified in Section 7(b) below for the Software identified as Covered Software in the Sales Confirmation (“**Covered Software**”). Software Maintenance will be provided by Supplier to Customer for the applicable Initial Term beginning from the applicable Delivery Date. At the end of the Initial Term and each one-year anniversary thereafter, Software Maintenance shall automatically renew for successive Renewal Terms at Supplier’s then current rates; provided, that Software Maintenance shall terminate automatically upon the expiration or termination of the applicable Usage Rights; and, provided further, that either party may elect to not renew Software Maintenance with respect to Software licensed on a perpetual basis by providing written notice to the other party at least 30 days prior to the end of the applicable Initial Term or the then current Renewal Term. Software Maintenance is non assignable by Customer.
- (b) “**Software Maintenance**” with respect to Covered Software includes the following:
- (i) **Software Updates.** Supplier will make available to Customer updates, bug fixes and corrections generally released by Supplier for such Covered Software (collectively, “**Updates**”), together with updates to the applicable Documentation when made generally available to Supplier’s customers. Updates do not include new products or modules which Supplier prices separately. Documentation will be in hard copy, on-line or other format as Supplier may determine. Updates shall be deemed included in the definition of “Covered Software” for purposes of this Agreement. If applicable, all prior versions or other portions of Covered Software replaced by an Update shall be destroyed by Customer.
 - (ii) **Reporting of Errors.** If Customer notifies Supplier in writing that such Covered Software does not operate substantially in accordance with its Documentation, Customer shall provide to Supplier such information and materials as Supplier may reasonably request to document and reproduce such problem and to verify whether any proposed solution corrects such problem. Such information may include a written explanation of such problem, a written description of the operating environment, and (if permitted) a copy of any software program used with the Covered Software. Following the receipt of such information and materials, if Supplier determines that such Covered Software does not operate substantially in accordance with the related Documentation, then Supplier will use reasonable commercial efforts to correct or replace the defective Covered Software.
- (c) Unless otherwise expressly agreed to in writing by Supplier and Customer, any services performed by Supplier beyond the Software Maintenance shall be billable to Customer at Supplier’s then current rates.
- (d) Customer shall make its computer systems available to Supplier via remote access in order to enable Supplier to perform the Software Maintenance and any additional services with respect to Covered Software. Customer shall be responsible, at its own expense, for acquiring and implementing the necessary telecommunications connections and remote access software.
- (e) All Updates, enhancements, or other modifications with respect to Covered Software provided to Customer in connection with Software Maintenance shall be subject to all of the terms and restrictions applicable to the Usage Rights and any other agreement under which such Covered Software was licensed to Customer, which terms are incorporated herein by this reference.
- (f) Supplier shall have no obligation to provide Software Maintenance with respect to any portion of the Covered Software which has (i) been used other than in accordance with this Agreement and the applicable EULA, (ii) been modified, maintained, repaired or otherwise tampered with by anyone other than Supplier’s authorized representatives, or (iii) been used other than in the ordinary course of Customer’s business. Without limiting the foregoing, Supplier shall have no obligation with respect to any problem associated with (A) failure of Covered Software as a result of accident, abuse or misapplication; (B) use of Covered Software with hardware or software not supplied or expressly approved by Supplier; (C) any version of Covered Software as to which a subsequent version was released more than ninety (90) days earlier; or (D) defective or malfunctioning hardware, operating system or peripheral device.

Section 8. *Customer Feedback; Anonymized Data*

Supplier shall have the right to use or act upon any Customer Feedback provided by Customer relating to the Hardware, Software, Cloud Service, System or any Services provided to Customer under this Agreement to the extent it does not include any confidential information of Customer. Supplier may gather statistical data, analytics, trends and other aggregated or otherwise de-identified data derived from Customer’s use of the Hardware, Software, Cloud Service, System and/or Services, provided that such data does not include any personal identifiers relating to Customer, and Supplier may use this anonymized data for all proper purposes, including, without limitation, to analyze and understand how the Hardware, Software, Cloud Service, System and/or Services are used and to offer improvements and enhancements thereto to its customers.

Section 9. Limited Warranty

- (a) Unless otherwise specified by Supplier in separate written product warranty accompanying any Hardware manufactured by Supplier (“**Supplier Hardware**”) (in which case such other product warranty term shall control), Supplier warrants to Customer that such Supplier Hardware will be free from defects in material and workmanship for one (1) year from the original delivery date of Supplier Hardware from Supplier to Customer (the “**Warranty Period**”). If, prior to the expiration of the Warranty Period, any Supplier Hardware fails to conform to this limited warranty and Customer informs Supplier in writing of such nonconformance, then Supplier will either (i) repair or replace the defective Supplier Hardware or (ii) in Supplier’s sole and exclusive discretion, refund the amount that Customer paid for such defective Supplier Hardware at time of original purchase, which amount shall pro-rated for Warranty Periods greater than one (1) year. Repair or replacement may be made with new or refurbished Supplier Hardware or component parts (at Supplier’s option) or, if Supplier no longer sells the applicable Supplier Hardware, with similar Hardware of like function. Customer shall bear the costs of access, de-installation, reinstallation and transportation of Supplier Hardware to Supplier and back to Customer. Any repair or replacement pursuant to this limited warranty shall not extend the Warranty Period. If Supplier provides services that are incidental to the sale of Supplier Hardware, such as installation, training and start-up (“**Incidental Services**”), Supplier warrants to Customer that it will perform the Incidental Services in a professional, workman-like manner. Supplier will re-perform any non-conforming Incidental Services for no charge, as long as Customer provides written notice to Supplier within five (5) days following completion of the Incidental Services. The limited remedies described herein are the sole and exclusive remedy and Supplier’s sole responsibility under this limited warranty.
- (b) The foregoing limited warranty does not apply to (i) consumable hardware and components (e.g., batteries, filters, belts and kits); (ii) Supplier Hardware subjected to misuse, neglect, accident or improper installation; (iii) Supplier Hardware damaged by disaster (e.g., fire, flood, wind, earthquake or lightning) or other causes beyond the control of Supplier (e.g., excessive voltage, mechanical shock or water damage); (iv) Supplier Hardware whose defect has been caused by alteration or repair by anyone except Supplier or Supplier’s authorized representatives; (v) normal wear and tear; (vi) Hardware not manufactured by Supplier or bearing its nameplate (“**Third-Party Hardware**”); (vii) any Supplier Hardware manufactured or customized according to Customer’s specifications; (viii) Supplier Hardware that Customer cannot reasonably evidence have been stored, installed, operated, used or maintained other than in compliance with Supplier’s published specifications and instructions; (ix) Supplier Hardware purchased through other than a Supplier authorized channel; (x) any Software or Cloud Service (any such Software and Cloud Service being warranted under the terms of the applicable EULA, if any); and (xi) Supplier Hardware that is subject to a separate written warranty accompanying Supplier Hardware, included in the applicable Supplier Hardware documentation. Third-Party Hardware may be covered by warranties by other manufacturers, suppliers, or publishers, which Supplier may assign or pass through to Customer, without recourse to Supplier, to the extent allowable by the other manufacturers, suppliers or publishers.
- (c) Customer must notify Supplier of any warranty claims and request a Return Material Authorization (“**RMA**”) by contacting Supplier within ten (10) days of the time when Customer discovers or ought to have discovered the defect. Returned Supplier Hardware will only be accepted if the RMA is included with the returned Supplier Hardware, and Supplier Hardware returned without a proper RMA will be returned to Customer at Customer’s expense.

Section 10. Disclaimers & Limitation of Liability

- (a) THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY SUPPLIER WITH REGARD TO THE PRODUCTS AND SERVICES PROVIDED PURSUANT TO THIS AGREEMENT OR OTHERWISE. SUPPLIER EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- (b) IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION, ANY LOSS OF DATA, PROFITS OR REVENUES OR THE TIME VALUE OF CUSTOMER’S EMPLOYEES) ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR FAILURE OF PERFORMANCE BY SUPPLIER OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR THE SYSTEM OR USE OR INABILITY TO USE THE SYSTEM BY CUSTOMER REGARDLESS OF WHETHER SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SUPPLIER’S LIABILITY EXCEED THE AMOUNT PAID BY CUSTOMER TO SUPPLIER FOR THE PARTICULAR PRODUCT OR SERVICE TO WHICH SUCH LIABILITY RELATES.
- (c) THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

Section 11. Indemnification

- (a) At Supplier's expense as described herein, Supplier shall indemnify, defend and hold Customer harmless from and against any claim that any Software or Cloud Service, or any part thereof, infringes a United States patent or copyright by defending against such claim and paying all amounts that a court finally awards or that Supplier agrees to in settlement of such claim. To qualify for such defense and payment, Customer must: (i) give Supplier prompt written notice of such claim; and (ii) allow Supplier to control, and fully cooperate with Supplier in, the defense and all related negotiations. Supplier's obligation under this Section is conditional upon Customer's agreement that, if the operation or use of the Software or Cloud Service becomes, or in Supplier's opinion is likely to become, the subject of an infringement claim, then Customer shall permit Supplier, at Supplier's expense, either to procure the right for Customer to continue to use the Software or Cloud Service, or to replace or modify the Software or Cloud Service so that it becomes non-infringing and retains substantially comparable function. If neither of the foregoing alternatives is reasonably available to Supplier, Supplier may terminate this Agreement (and the Usage Rights granted hereunder) with respect to the Software and/or Cloud Service and, upon its return to Supplier, Supplier shall refund to Customer the usage fees previously paid by Customer to Supplier for such Software or Cloud Service.
- (b) Supplier shall have no obligation with respect to any claim based on (i) Customer's use of Software or Cloud Service in violation of this Agreement or the applicable EULA, or (ii) use or combination of Software or Cloud Service with equipment, software or data not supplied or expressly approved by Supplier. This Section 11 states Supplier's entire obligation and liability to Customer with respect to infringement of any intellectual property right or any other third-party claims and sets forth Customer's sole and exclusive remedies for any such claims.

Section 12. Ownership; Confidentiality

- (a) Customer acknowledges and agrees that all Software, Cloud Service, Documentation and all other copyrights, patents, processes, trade secrets, discoveries, developments or other intellectual property rights, whether pre-existing or identified or discovered in connection with the performance of the Software Maintenance or other Services hereunder (collectively, "**Technology**") shall be the property of Supplier, and Customer will have no title, right of ownership, or other rights in or to the Technology, other than the licenses to use the Technology expressly granted hereby or in any related EULA.
- (b) Each party shall retain in strict confidence, using the same degree of care that it uses to protect its own confidential information, all information and data relating to the other party's business, development plans, programs, documentation, techniques, trade secrets, systems, and know how, and shall not, unless otherwise required by law, disclose such information to any third party without the other's prior written consent. Upon Supplier's request, Customer shall inform Supplier in writing of the number and location of the original and all copies of each of the Software, Documentation and Hardware.
- (c) Without limiting any other terms or restrictions set forth in the applicable EULA for the Technology, Customer acknowledges that the Technology, including, without limitation the Software and related Documentation, contains valuable proprietary information and trade secrets of Supplier and that Customer shall take reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use thereof. Without limiting the foregoing, Customer agrees: (a) to take with respect to the Technology at least those measures that it takes to protect its own most highly confidential information; (b) that the Technology, or any part thereof, may not be disclosed, reproduced, summarized, distributed or used except as necessary to exercise the license granted herein or under the respective EULA; (c) not to disclose the Technology, or any of the features, functions or performance characteristics thereof, to third parties or to Customer's employees, except to those employees of Customer who require such disclosure in order for Customer to use the Technology in the manner permitted herein or in any applicable EULA; (d) not provide externally or to third parties any oral or written communication that compares any Technology with any other similar product of any third party; and (e) to ensure that its employees who have access to the Technology have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any use or access of such software or materials.

Section 13. Default & Termination

- (a) This Agreement, or the Usage Rights and/or Services provided hereunder, may be terminated by either party in the event of a material breach by the other party which breach is not cured within thirty (30) days of written notice of such breach.
- (b) Without limiting Section 13(a), Supplier may terminate this Agreement and the Usage Rights and Services provided hereunder, in the event that (i) the System (or any component thereof) is relocated to a location other than the Site without prior written notice to Supplier, or (ii) Customer fails to pay any of the fees for Maintenance Services or the Usage Rights as required by this Agreement.
- (c) In the event the Usage Rights for Software licensed on a subscription basis or made available on a SaaS basis are

terminated pursuant to Section 13(a) or 12(b) other than because of a breach by Supplier, Supplier shall be entitled to recover from Customer the amount of the license fees remaining unpaid by Customer for the remainder of the Initial Term or the then effective Renewal Term, as the case may be, together with all costs and expenses, including reasonable attorney's fees, incurred by Supplier in connection with any action, counterclaim or proceeding brought by Supplier to recover such fees. Such amount shall be recoverable by Supplier as liquidated damages and not as a penalty.

- (d) In the event that the Usage Rights or Software Maintenance is terminated, by either party and for any reason, Supplier shall not be required to reinstate the Usage Rights or Software Maintenance. If reinstatement is requested by Customer and permitted by Supplier in Supplier's discretion, reinstatement may be subject to Supplier's then-current terms, conditions and fees for reinstatement.

Section 14. Miscellaneous

- (a) **Survival.** Sections 9 (Limited Warranty), 10 (Disclaimers & Limitation of Liability), 12 (Ownership; Confidential Information), 13 (Default & Termination) and 14 (Miscellaneous) shall survive termination or expiration of this Agreement.
- (b) **Customer Representations.** By accepting this Agreement and/or by using the Products or Services, Customer represents and warrants that all information provided by Customer to Supplier in connection with Customer's purchase, license or acquisition of rights to access the Products or Services is true and accurate in all material respects. Customer further represents and warrants that Customer is duly authorized to enter into this Agreement for and on behalf of the applicable person, company, or other entity. Should either of these representations prove false at any time, Supplier may, in Supplier's sole discretion, terminate this Agreement without any obligation to Customer.
- (c) **Governing Law and Venue.** This Agreement, and any dispute arising under or in connection with this Agreement, shall be governed by the law of the Commonwealth of Pennsylvania, and the federal laws of the United States of America, without reference to conflicts of laws principles or provisions. Any litigation under or in connection with this Agreement, or any Products or Services provided hereunder, shall be brought in the Montgomery County, Pennsylvania, Court of Common Pleas, or the U.S. District Court for the Eastern District of Pennsylvania, and each party hereby consents to the jurisdiction of such court.
- (d) **Assignment.** Supplier may assign this Agreement effective upon sending written notice to Customer. This Agreement may not be assigned by Customer without Supplier's prior written consent, which consent will not be unreasonably withheld. Notwithstanding the foregoing, no such assignment will be effective unless and until (i) the assignee expressly agrees, in a writing delivered to Supplier, to assume all of Customer's obligations under this Agreement and to be bound hereby; (ii) the assignee executes and delivers to Supplier an assignment and assumption agreement in a form to be provided by Supplier; and (iii) within thirty (30) days of the proposed assignment, assignee pays to Supplier a fee of \$1,000.00. In no event may Customer assign this Agreement or any rights hereunder, to an entity deemed by Supplier to be a competitor of Supplier.
- (e) **Severability.** If any of the provisions of this Agreement are subsequently determined to be invalid under any applicable statute or rule of law, such provision shall be, to that extent, deemed omitted and the remainder shall be valid and enforceable.
- (f) **No Waivers.** The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. The waiver by either party of a breach of any provision hereof shall not be taken, construed or held to be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof.
- (g) **Force Majeure.** Supplier shall not be liable for, nor be deemed in breach of this Agreement as a result of, any delay or failure of performance resulting from any act of God, pandemic or epidemic, governmental action, strike, labor shortage, war, civil disorder, unavailability or shortage of parts or supplies, failure of transportation or other cause beyond its control and without its fault or negligence. Supplier will not be responsible for Customer's access to SaaS to the extent it is adversely affected by (i) Customer's equipment, software or other technology and/or third party equipment, software or other technology outside of Supplier's control (e.g., local network or firewall issues); (ii) outages caused by hackers, sabotage, viruses, worms or other third party wrongful actions; (iii) power outages at Customer's Site; or (iv) internet access or related problems at Customer's Site.
- (h) **Authority.** No agent, employee or representative of Supplier has any authority to bind Supplier to any affirmation, representation or warranty concerning any Product or Service furnished under this Agreement unless such affirmation, representation or warranty is specifically included within this Agreement and is confirmed in writing by an authorized officer of Supplier.
- (i) **Merger; Amendment.** This Agreement is the complete agreement between the parties with respect to the Products and

Services furnished hereunder and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral) regarding this subject matter. This Agreement shall not be amended or altered except in writing signed by the authorized representatives or officers of the parties.

- (j) **Non-Solicitation.** Customer shall not, directly or indirectly, either for its own benefit or purpose or for the benefit or purpose of any other person, for the period of this Agreement and for one year thereafter, employ or offer to employ, call on, actively interfere with Supplier's relationship with, or attempt to divert or entice away, any employee of Supplier or an affiliate of Supplier.
- (k) **Positek Partner Transactions.** If Customer purchases, licenses, or otherwise acquires access to Supplier's Products or Services from a Positek Partner, the terms of this Agreement apply to Customer's use of such Products and Services and prevail over any inconsistent provisions in Customer's agreement with the Positek Partner.
- (l) **Notices.** Supplier may provide Customer with notice via email, regular mail and/or postings on the PositekRFID.com website or any other website used in connection with the applicable Products. Notices to Supplier should be sent to Positek RFID, Attn: Legal Department, 1210 Stanbridge St, Suite 710, Norristown, PA 19401, U.S.A., unless this EULA, applicable supplemental terms or an Order specifically allows other means of notice.
- (m) **Translations.** Supplier may provide local language translations of this Agreement in some locations. Customer agrees those translations are provided for informational purposes only and if there is any inconsistency, the English version of this Agreement will prevail.
- (n) **Order of Precedence.** If there is any conflict between this Agreement, Supplier's EULA or any Product Specific Terms, the order of precedence is:
 - (i) such Product Specific Terms;
 - (ii) the applicable EULA; then
 - (iii) this Agreement.

Section 15. Certain Definitions

"Cloud Service" means Supplier's hosted software-as-a-service offering or other Supplier cloud-enabled feature described in the Order. Cloud Service includes applicable documentation and may include cloud-based Software.

"Customer Feedback" means all oral or written communications regarding improvements or changes to Product, Service or Data Collection Tool that Customer provides to Supplier.

"Data Collection Tools" means hardware and/or software tools that support Supplier's ability to provide Software Maintenance or Cloud Service, including, without limitation, troubleshooting on cases, data analysis, and report generation capabilities as part of the System or any Services.

"Delivery Date" means the date specified in the Order, or if no date is so specified:

- (a) where Usage Rights in Software or Cloud Services are granted separately:
 - (i) for Software, the earlier of the date Software is made available for download or installation, or the date that Supplier ships the tangible media containing the Software;
 - (ii) for Cloud Services, the date on which the Cloud Service is made available for Customer's use; or
- (b) where Usage Rights in Software or Cloud Services are granted together, the earlier of the date Software is made available for download, or the date on which the Cloud Service is made available for Customer's use.

"Documentation" shall mean Supplier's standard user and technical documentation for the Products, Services or System, as it may be amended by Supplier from time to time, which may be in hard copy, on-line or other format as Supplier may determine.

"Initial Term" shall, in connection with Maintenance Services, Cloud Service or Software licensed on a subscription or SaaS basis, mean the applicable initial term specified therefor in the Sales Confirmation.

"Positek Partner" means a Supplier authorized reseller, distributor or systems integrator.

"Renewal Term" shall, in connection with Maintenance Services, Cloud Service or Software licensed on a subscription or SaaS basis, mean the applicable renewal term specified therefor in the Sales Confirmation.

"RFID Tags" shall mean the radio frequency identification devices, as described in the technical documentation supplied by their respective manufacturers.

"Site" shall mean Customer's location specified on the applicable Sales Confirmation. Additional sites require Supplier's written consent and may require payment of additional license fees.

“**System**” shall mean a complete integrated RFID system comprised of Hardware (including RFID Tags), Software and/or Cloud Service, and Documentation, as specifically described in a Sales Confirmation.

“**Usage Rights**” shall mean the right to access and use Software and Cloud Service granted pursuant to Section 6 above.

“**Usage Term**” means the period commencing on the Delivery Date and continuing until expiration or termination of the Initial Term and any applicable Renewal Term, as specified in the Order, during which period Customer has the right to use the applicable Software or Cloud Service.