

**APEX SOFTWARE TECHNOLOGIES, LLC**  
**TERMS AND CONDITIONS – APEX HCM™ PLATFORM**

**Effective: March 15, 2018**

The following Terms and Conditions (the “Apex Terms”) set forth the provisions applicable to the use by a Client (defined below) of the Apex HCM™ hosted payroll management software application (the “System”) and related data, products and services (collectively with the System, the “Apex Services”) made available by a payroll service bureau customer of Apex providing payroll services to the Client (the “PSB”), in PSB’s capacity as a reseller of the Apex Services. For purposes of these Apex Terms, the “Client” is an employer who has contracted with a PSB for the PSB’s provision of payroll services to such employer and who has subscribed for direct access to the Apex Services in connection with such payroll services, pursuant to the terms of a services agreement between Client and PSB (the “PSB Contract”). In the event of any conflict between the terms of the PSB Contract and these Apex Terms, these Apex Terms will govern and apply with respect to the Apex Services. All Clients are required to acknowledge their agreement to these Apex Terms, in writing or electronically (which may be included in the PSB Contract or may be a separate acknowledgment).

**1. Provision of Apex Services.**

a. Subject to the terms and conditions of these Apex Terms (including, without limitation, the restrictions set forth in Section 1(b), below), PSB, through an agreement with Apex Software Technologies, LLC (“Apex”), grants to Client, during the applicable term of Client’s order with PSB for the Apex Services (the “Order”), a limited, nontransferable, nonexclusive license for Client’s End Users<sup>1</sup> with appropriate access authority (as assigned by Client): (i) to access over the Internet and use the specific Apex Services set forth in the Order(s) solely for Client’s own internal business; (ii) if applicable to the Apex Services purchased, install, access and use the applicable End User App(s)<sup>2</sup> on such End User’s mobile device solely for the purpose of accessing and using the Apex Services in accordance with the terms of these Apex Terms; and (iii) to use the Documentation<sup>3</sup> as reasonably necessary for Client’s internal use related to the licenses granted under this Section 1(a). The Apex Services made available to Client include, at a minimum, access, via the Internet, to the System and may also include data storage services and access, via the System, to integrated third-party products, services or data (collectively, “Third Party Services”), but only to the extent not subject to other terms of service or separate written agreement with Apex.

b. Client and their respective End Users will not, directly or indirectly: (i) license, sell, redistribute, lease or otherwise transfer or assign any of the Apex Services or an End User App, (ii) alter or permit a third party to alter any part of the Apex Services or an End User App; (iii) permit any third party other than an End User with appropriate access authority, to access or the use the Apex Services or any End User App; (iv) disassemble, decompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from the Apex Services or any End User App; (v) access or use the Apex Services or any End User App on equipment that does not possess the System Requirements (defined below); or (vi) use the Apex Services or any End User App to operate a

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<sup>1</sup> “End User” means with respect to the Apex Service, the employees, independent contractors or other agents of Client or an Authorized Affiliate for whom Client has purchased the right to access and use such Service, via unique Access Credentials. The number of End Users for which Client has purchased access to a particular Apex Service will be set forth on the applicable Order(s) for such Apex Service.

<sup>2</sup> “End User App” means a stand-alone software application provided or made available to Client and its End Users in connection with its subscription to the Apex Services for installation on mobile devices to transmit or upload Client Data from such devices to the Apex Services.

<sup>3</sup> “Documentation” means the user documentation and any other operating, training and reference manuals (including, without limitation, any modifications or derivative works thereof) supplied to Client relating to the use of the System made available to Client under these Apex Terms.

service bureau or for any unlawful purpose. Client will ensure that the End Users adhere to the terms of these Apex Terms, and will be liable for any breach of these Apex Terms by any End User.

## **2. Third Party Services.**

a. With respect to any Third Party Services available to or used by Client in connection with the Apex Services, Client acknowledges and agrees that: (i) access and use of the Third Party Services may be subject to Client's subscription to or purchase of a separate license from (or agreement or acceptance of separate terms of use or similar terms with) the provider of such Third Party Services (the "Third Party Provider"); (ii) Apex's provision of integrated access with such Third Party Services via the System may be revoked by the Third Party Provider or Apex at any time and without notice or any liability to Client or its End Users; and (iii) Apex may transmit to the applicable Third Party Provider such Client Data residing in the System with respect to Client and its End Users as is reasonably necessary for the Third Party Provider to perform and provide the Third Party Services or for such other use as is authorized by Client's agreement with such Third Party Provider. Without limiting the generality of the terms of Section 5(a)(i), below, Client represents and warrants that Client has obtained all consents necessary in order to provide such information to Apex and for Apex to disclose such information to the Third Party Provider.

b. CLIENT ACKNOWLEDGES THAT APEX'S ACTIVITIES WITH RESPECT TO ANY THIRD PARTY SERVICES ARE OFFERED BY APEX SOLELY AS A CONVENIENCE TO CLIENT AND ITS END USERS, AND APEX WILL HAVE NO LIABILITY FOR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY DIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUES, LOSS OF DATA OR PROPERTY ARISING FROM ANY CLAIMS WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT TORT), OR OTHERWISE IN CONNECTION WITH ANY THIRD PARTY SERVICES, THE INTEGRATION OF SUCH THIRD PARTY SERVICES WITH THE APEX SYSTEM OR SERVICES (OTHER THAN FOR THE PAYMENT OF ANY UNDISPUTED AMOUNTS DUE TO CLIENT WITH RESPECT TO CLIENT'S USE OF SUCH THIRD PARTY SERVICES, IF ANY), EVEN IF APEX, ITS AFFILIATES OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

c. Client will indemnify, defend, and hold Apex harmless from and against any and all costs, liabilities, losses and expenses, (including, but not limited to, reasonable attorneys' fees) resulting from any claim, suit, action or proceeding (each, an "Action") brought by any third party (including, without limitation, any Third Party Provider or End User) against Apex arising out of or relating to (i) Client's activities or relationship with the Third Party Provider; or (ii) Client's use or misuse of any Third Party Services. Customer may not settle any Action without the consent of Apex and will permit Apex, at Apex's sole option and expense, to participate in the defense of any Action.

d. Client acknowledges that its access to the Services may be enabled via integration with PSB's own hosted software platform, which will be considered a "Third Party Service" (and PSB a "Third Party Provider") for purposes of this Section 2.

## **3. Configuration of Services.**

a. From time to time, Apex may make enhancements or customizations to the Apex Services or the End User App. Any intellectual property created in the course of implementing and providing the Apex Services or End User App, whether by Apex alone or jointly with PSB or Client, will be and remain the exclusive property of Apex, and Client assigns any of its rights, interest or title in or to the same to Apex.

b. Apex may from time to time update the functionality, features, user interface, user documentation, training and educational information, and any other aspects of or relating to the Apex Services in its sole discretion, provided that such changes do not materially adversely affect the functionality of the Apex Services. Apex does not make any guarantee as or warranty as to the quality of transmission of data over telephone, digital subscriber lines or any other method of Internet delivery, including, without limitation, server downtimes or other network related problems.

#### **4. Client Requirements.**

a. Apex may establish, from time to time, minimum computer system, browser and equipment (including, without limitation, mobile device operating system) requirements set forth at [www.apexhcm.com/requirements/v-03-15-2018](http://www.apexhcm.com/requirements/v-03-15-2018) or such other URL as specified by Apex from time to time (the "System Requirements"), for the equipment from which and with which the Apex Services should be accessed or on which the End User App may be installed so that all licensed functionalities are operational. Client may be required to purchase software, hardware or services (such as Internet access services) in order to utilize the Apex Services or satisfy the System Requirements, as may be amended by Apex from time to time. Client will be solely responsible for all such software, hardware and services.

b. Client is responsible for determining and assigning access levels and authority to the Apex Services to its End Users and for maintaining the confidentiality of all usernames, passwords and related information (collectively, "Access Credentials") assigned to or connected with its account. Client will not permit the sharing of Access Credentials and related information by the End Users. If an End User leaves the employ of Client or transfers to an unrelated position in Client's employ, Client may designate a replacement End User without charge.

c. From time to time, Client may provide Apex with feedback, both positive and negative, regarding Client's and its End User's use of the Apex Services, including, without limitation, details regarding ease of use, functionality, errors or problems accessing or using the Apex Services, possible enhancements or modifications to the Apex Services and other similar information (collectively, the "Feedback"). All such Feedback will be owned by Apex and be deemed to be proprietary and confidential information of Apex, and Client will not use or disclose such Feedback to any third party. Without limiting the generality of the foregoing, Client agrees that, except as directly related to, and in the course of, providing Feedback to Apex, it will not make or publish any negative, critical, disparaging, false or misleading representations, statements (whether written or oral) about Apex or any of its affiliates, owners, directors, members, partners, customers, clients, employees, products or services, in any manner or medium whatsoever, or otherwise hinder or interfere with Apex's business or its provision of services to its customers and end users.

#### **5. Client Data.**

a. With respect to any Client Data<sup>4</sup> provided to Apex, Client: (i) grants Apex the right to use, copy, modify, manipulate and create derivative works of the Client Data as necessary in order for Apex to provide and perform the Apex Services; (ii) agrees to secure rights in the Client Data necessary for Apex to provide the Apex Services without violating the rights of any third party, or otherwise obligating Apex to Client or any third party (except as otherwise set out in these Apex Terms). Apex will implement reasonable and appropriate technical and organizational measures to help secure the Client Data against accidental or unlawful loss, access, or disclosure. Client agrees that these measures are Apex's only responsibility with respect to the security and handling of Client Data. Except as otherwise required by applicable law, Apex does not and will not accept any obligations in any separate license or other agreement that may apply to the Client Data or use of the Apex Services. Apex may transmit or disclose Client Data to third parties in accordance with Client's or its End User's directions (whether via the Apex Services or otherwise).

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<sup>4</sup> "Client Data" means (i) information or data created or otherwise owned by Client, or licensed by Client from third parties, and input in or otherwise used in conjunction with the Apex Services; or (ii) information or data output generated by the Apex Services that is based on information or data supplied by the Client and is specific to the Client, including, without limitation, including, without limitation, any information relating to the wages and salaries of employees or contractors of Client, such as, but not limited to, information relating to federal and state withholding, pension or 401(k) contributions, flexible spending account or other benefit contribution. For purposes of this definition, "Client" will include any Authorized Affiliates.

b. Client is responsible for extracting or exporting any and all Client Data contained in the Apex Services prior to expiration or termination of the applicable Order relating to such Apex Services. Upon expiration or termination of any Order and unless otherwise agreed to by the parties in writing, Apex will disable all Client accounts relating to the terminated Apex Services and delete the Client Data contained in those accounts. Client agrees that notwithstanding any other term in these Apex Terms, Apex has no obligation to continue to hold or return any Client Data. Client also agrees that Apex has no liability for deletion of any Client Data pursuant to these terms.

c. With respect to any personally identifiable information or data Client or its End Users upload or that Apex collects through the Apex Services ("Personal Data"), Client agrees (i) that Apex or its affiliate(s) may process such Personal Data consistent with applicable law and regulation, only for the purpose of the provision of services by Apex to Client or for purposes connected with the subject matter of the disclosure or business relationship between the parties; (ii) that such processing may include the storage of such Personal Data in a U.S. database; and (iii) that Client will, to the extent required by applicable law, obtain all necessary consents to such processing from the data subjects concerned.

d. In the event (i) Apex is required to respond to any search warrant, court order, subpoena other valid legal order relating to Client or the Client Data, or (ii) Client requests material assistance from Apex in connection with Client's efforts to conduct any investigation, to cooperate with or respond to any investigation being conducted by a third party, or to pursue or respond to any matter or respond to any legal or administrative proceeding or similar matter, Client will reimburse Apex for any cost that it incurs in so responding or assisting.

e. Client grants Apex the right to collect anonymized data about Client, its End Users and the Client Data ("System Data") by automated means, including, without limitation, data mining, robots, scraping and similar extraction tools. Apex uses the System Data internally to diagnose technical problems, administer the Apex Services, and improve its offerings and marketing, and also reserves the right to disclose, rent and sell such anonymized data to third parties in the course of Apex's business. The System Data do not include any personally identifiable information related to the user of the Apex Services, but may include anonymized, de-identified and aggregated data. Notwithstanding any term to the contrary set forth herein, Client agrees and consents to Apex's collection, use and distribution of the System Data as set forth herein, and Client further agree that the System Data are Apex's sole and exclusive property.

**6. Disclaimers; Limitations on Liability.** TO THE FULLEST EXTENT PERMISSIBLE BY LAW, THE APEX SERVICES, INCLUDING WITHOUT LIMITATION ANY CONTENT OR DATA CONTAINED WITHIN THE APEX SERVICES, ARE PROVIDED "AS IS." PSB, ON BEHALF OF ITSELF AND APEX AND IO'S AFFILIATES, SERVICE PROVIDERS AND LICENSORS, EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATING IN ANY WAY TO THE APEX SERVICES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. PSB, ON BEHALF OF ITSELF AND APEX AND APEX'S AFFILIATES, SERVICE PROVIDERS AND LICENSORS, DOES NOT WARRANT THAT THE APEX SERVICES, SYSTEM OR ANY DATA OR INFORMATION CONTAINED THEREIN WILL BE ERROR FREE OR PROVIDED ON AN UNINTERRUPTED BASIS OR THAT DEFECTS WILL BE CORRECTED. APEX EDUCATION, ITS LICENSORS, SERVICE PROVIDERS AND ALL AFFILIATES OF THE FOREGOING SHALL NOT BE LIABLE FOR THE USE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN.

IN ADDITION, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NONE OF APEX OR APEX'S AFFILIATES, SERVICE PROVIDERS AND LICENSORS ARE RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THE Apex SERVICES OR ANY Apex DATA CONTAINED THEREIN.

**7. Proprietary Rights.** Exclusive of Client Data, Apex and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to the Apex Services and all legally protectable elements or derivative works of the foregoing. Apex may place copyright and/or other proprietary

notices, including hypertext links, within the Apex Services, and neither Client nor any of its End Users will remove such notices without Apex's written permission.

**8. Termination of PSB Contract; Suspension of Services.** In addition to any other rights of termination set forth elsewhere in these Apex Terms, the licenses granted hereunder will terminate automatically upon the expiration or termination of the PSB Contract. Client further acknowledges that Apex has the right to suspend and terminate Client's access to the System in the event that (a) Apex does not receive the fees due from PSB with respect to such access in a timely fashion; (b) if Apex believes Client's or its End Users' use of the Apex Services represents a direct or indirect threat to the function or integrity of the Apex Services, Apex's or its service providers' system or networks, or any third party's use of the Apex Services; (c) if reasonably necessary to prevent unauthorized access to client data (including, without limitation, the Client Data); or (d) to the extent necessary to comply with legal requirements.

**9. Governing Law; Third Party Beneficiaries.** THESE APEX TERMS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA, EXCLUSIVE OF ITS CHOICE OF LAW RULES. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect. Apex is an express third party beneficiary of these Apex Terms.

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