

**APEX SOFTWARE TECHNOLOGIES, LLC**  
**GENERAL TERMS**

**Last Updated: March 15, 2018**

These General Terms are part of and incorporated into that Master Services Agreement (the "MSA") executed by and between Apex Software Technologies, LLC ("Apex") and the customer identified in such MSA (the "Customer"). Capitalized terms used and not otherwise defined herein will have the same meanings given for those terms in the MSA execution page.

**1. Provision of Services.**

a. Subject to the terms and conditions of this Agreement, Apex will make the Service(s) identified in Customer's Orders available to Customer for the Service Term (described below) for use by Customer on its own behalf and as a service bureau on behalf of its Clients<sup>1</sup>. Except as otherwise provided on the Order or this Agreement, each Order is non-cancellable and will be subject to the terms and conditions of this Agreement. If required as part of Client's internal procedures, an Order may be supplemented by a purchase order issued by Client, but in no event will a Client purchase order modify any of the pricing, deliverables or terms set forth in the Order or this Agreement.

b. Customer's subscription to the Services as described on one or more Orders may include the provision of such Services to those Clients: (i) on behalf of whom Customer has purchased direct access to the Services (as listed in Customer's account and subject to any limitations on the number of Clients set forth in the applicable Order(s)); and (ii) who have agreed to be bound by those terms and conditions set forth at [www.apexhcm.com/client-terms/v-03-15-2018](http://www.apexhcm.com/client-terms/v-03-15-2018) or such other URL as specified by Apex from time to time (the "Client Terms"). Any modifications to the Client Terms by Apex will be effective when posted and will apply to Client subscriptions that are distributed by Customer after such posting; Apex may also provide Client with a notice of such modifications via email. Any modification of the Client Terms for a specific Client must be approved by Apex in writing, in advance. The Client Terms may be incorporated by Customer as an addendum to Customer's own contract with the Client or used as a standalone agreement for Clients, in Customer's discretion, and may be executed or otherwise accepted electronically. Subject to the terms of this Agreement, including, without limitation, Customer's payment of Fees applicable to such Services pursuant to Section 2, Apex will provide such Services to such Clients (each, an "Authorized Employer") as described herein.

c. As set forth in the Terms of Service, Customer's End Users<sup>2</sup> may be permitted to access and use one or more modules or features of such Services. End Users may be required to agree to or accept (including electronically) Apex's end user terms of use applicable to the relevant Services before accessing or using such Services, as the same may be modified by Apex from time to time (the "End User Terms"). As between the parties, Customer is solely responsible for determining and assigning access levels and authority to the Services to its End Users and for all use of the Services by those End Users. Apex will not have any liability to Customer or any third party for any End User's use or misuse of the Services.

**2. Fees and Payment Terms.**

a. Customer will pay to Apex all fees due for the Services according to the prices and terms listed in the Orders ("Fees"), together with (x) reasonable fees or costs for third party products or services Apex procures on behalf of Customer, to the extent set forth on an Order subject to this MSA or otherwise approved in advance by Customer in writing; and (y) all

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<sup>1</sup> "Client" means each customer or client of Customer with respect to whom Customer accesses or uses the Services (including, without limitation, each Authorized Employer) and which is assigned a unique Client identification number ("Customer ID"). Customer's subscription to the Services may be subject to a maximum number of active and inactive Clients, as set forth in the applicable Order.

<sup>2</sup> "End User" means with respect to the referenced Service, the employees, independent contractors or other agents of Customer or an Authorized Employer, as applicable, for whom Customer has purchased the right to access and use such Service, via unique Access Credentials. The number of End Users for which Customer has purchased access to a particular Service will be set forth on the applicable Order(s) for such Service.

reasonable expenses incurred in providing on-site training or other professional Services (such as, but not limited to, implementation and data migration services), including, without limitation, all travel, meals and lodging expenses (collectively, "Costs"), all in accordance with the following procedures:

i. Upon execution of an Order, Customer will remit payment in full for the amount equal to the initial implementation fees (the "Initial Fees") for the Services set forth on such Order. Thereafter, Customer will be invoiced in arrears for any other Fees or Costs. Invoices for recurring and usage Fees may be generated automatically through technical means integrated with the Services. Customer and its End Users will not take or fail to take any action that would impair, disable, interfere with or frustrate such technical means, and Customer and its End Users will reasonably cooperate with Apex to make available all information necessary for Apex's billing purposes.

ii. For all Fees and Costs other than the Initial Fees, ten (10) days after the invoice date, Apex will withdraw the invoiced charges from a deposit account established by Customer with a commercial bank or other financial institution satisfactory to Apex that for such purpose (the "Payment Account") and from which Customer has authorized Apex to make such withdrawals pursuant to the ACH Authorization form provided by Customer to Apex in connection with this Agreement. In the event that any withdrawals by Apex pursuant to the terms of this Section 2(a)(ii) are returned for insufficient funds, Customer will be responsible for and reimburse Apex for all bank fees or charges Apex incurs as a result of such insufficient funds, plus an additional administrative fee of \$75.00.

iii. Customer must notify Apex, in writing, of any disputed invoiced Fees or Costs within thirty (30) days of the invoice date; failure to provide written notice of such dispute within such period constitutes a waiver by Customer of such dispute. All invoice disputes must be made in good faith, and Customer must pay the undisputed portion paid in full as described in Section 2(a)(ii), above. Any disputed amounts resolved in favor of Customer will be credited to Customer's account on Customer's next invoice.

b. At any time after the first twelve (12) months of an Order, Apex may increase, upon thirty (30) days prior written notice to Customer, the Fees attributable to the Service(s) set forth on such Order; provided, however, that the rate of increase in any such Fees will not exceed a percentage equal to the sum of (i) the percentage equal to the percentage change in the Consumer Price Index, All Urban Consumers (CPI-U) for the twelve (12) month period ending in the month immediately preceding the month in which such fee increase occurred, as published by the United States Department of Labor Bureau of Labor Statistics, and (ii) five percent (5%) rounded up to the nearest penny. In addition to the foregoing, upon sixty (60) days prior written notice, Apex may modify all Fees set forth on an Order for the first and any subsequent Renewal Service Term (as defined hereafter) to conform to Apex's then-current fees for the applicable Services.

c. Any Initial Fees not received upon execution of an applicable order, and any other charges not received within ten (10) days of the invoice date (whether due to insufficient funds in the Payment Account or otherwise), will be considered delinquent and will accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. In addition to the foregoing and without prejudice to Apex's other rights and remedies under this Agreement, at law or equity, if Customer is delinquent in its payments, Apex may, at Apex's sole discretion do any one or more of the following (subject to any notice and cure period otherwise required hereunder): (i) terminate this Agreement pursuant to its terms; (ii) in whole or in part suspend providing Services (or any of them) to Customer until payment in full has been made to Apex or (iii) require other assurances to secure Customer's payment obligations hereunder. In the event that any delinquent amount is referred to an agency or attorney for collection, Customer agrees to pay all costs of collection, including, without limitation any collection agency, court costs or attorneys' fees.

d. All fees charged by Apex with respect to the Services are exclusive of taxes, VAT and similar fees now in force or enacted in the future imposed on the transaction, all of which the Customer will be responsible for, except for taxes based on Apex's net income.

### **3. Term; Termination.**

a. The initial term of the MSA will begin upon execution by both Customer and Apex and will continue in full force and effect until the termination or expiration of the last Order then in effect. The initial term of each Order, and the initial term of the Customer's subscription for the Services described in the Order (the "Initial Service Term"), begins upon

the effective date of that Order and will continue for the period set forth in the Order. If no period is specified in the Order, the Initial Service Term will be a period of two (2) years commencing on the effective date of the Order (subject to survival of the terms thereof as described in Section 3(f), below). The term of an Order will renew for additional successive periods equal to the term specified in the Order (or, if none is specified, for successive one (1) year periods) (each, a "Renewal Service Term") unless either party notifies the other party in writing of its election to not renew such Order at least thirty (30) days prior to the then-expiring term. The Initial Service Term and all Renewal Service Terms for a particular Order are individually and collectively referred to the "Service Term."

b. Apex may terminate this Agreement or any Order, or suspend the provision of Services under any Order, immediately upon written notice to Customer if: (i) Customer commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of the same (other than Customer's failure to pay any amounts when due, which must be cured within five (5) business days after written notice of the same); (ii) Customer becomes the subject of any involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such proceeding is not dismissed within sixty (60) days after filing; or (iii) commits a material breach of this Agreement that is incapable of remedy, including, without limitation Customer's or any End User's breach of any license restrictions, intellectual property ownership rights or any restrictive covenants under this Agreement or any End User Terms.

c. Customer may terminate this Agreement or any Order immediately upon written notice to Apex if: (i) Apex commits a material breach of this Agreement and fails to cure such breach within sixty (60) days after written notice of the same; or (ii) Apex becomes the subject of any involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such proceeding is not dismissed within sixty (60) days after filing.

d. Apex may cancel or suspend the provision of any Service, or portion thereof, upon reasonable notice to Customer if the provision of that Service, or any portion thereof, is determined to be a violation of any applicable law or regulation or of any Apex license in any jurisdiction, or is no longer permitted under any of the same. Further, Apex's ability to provide the Services may be subject to various licenses or other agreements (each a "Service Agreement") between Apex and its third party suppliers. In the event of the expiration or termination of any applicable Service Agreement, Apex will use commercially reasonable efforts to obtain alternative suppliers in order to avoid suspension or disruption in the Services. If Apex is unable, for any reason, to obtain such an alternative or replacement Service Agreement, or if Apex reasonably determines that the provision of any Services would be a violation of any applicable law or regulation or any Apex license in any jurisdiction or is no longer permitted under any of the same, Apex may terminate all affected Orders upon written notice to Customer without any liability to Customer. Apex will give Customer at least sixty (60) days prior written notice to Customer (or, if it is not possible to give 60 days notice, as much notice as possible under the circumstances) of the termination or expiration of a Service Agreement governing Apex's ability to deliver the Services, or any other condition arising under such Service Agreement that is likely to adversely affect Customer's use of the Services or Apex's ability to provide the Services. If Apex terminates any Order pursuant to this Section 3(d), and Customer has prepaid for any Services under that Order, then Apex will, after applying such prepayment to all fees and charges due under the Agreement, return the unused portion of such prepayment to Customer within forty-five (45) days after the date of termination.

e. Upon the effective date of termination of any Order: (i) Apex will immediately cease providing the Services set forth in such Order, and Customer will immediately cease using such Services; and (ii) any and all payment obligations of Customer under such Order for Services provided through the date of termination will be immediately due and payable. If Customer fails to pay such amounts when due, then Apex may impose the late fees set forth in Section 2(c). In addition to the foregoing, and except as otherwise set forth in an Order, within thirty (30) days of termination of this Agreement as a whole, each party will return or certify the destruction of all Confidential Information (defined hereafter) of the other party in its possession and will not make or retain any copies of such Confidential Information, except as otherwise expressly permitted by this Agreement or as required (and only to the extent necessary) to comply with any applicable legal, archival or accounting recordkeeping requirement; provided, however, that all such retained data will remain subject to the confidentiality provisions of Section 7 of these General Terms.

f. Except as otherwise set forth in a notice of termination, termination of any Order will not serve to terminate any other Order or this MSA or the parties' respective obligations thereunder. The definitions herein and the respective rights and obligations of the parties under Sections 3(d)-(f), 5(c) and 6-9, 10(b) and 11-12 will survive any termination or expiration of this Agreement.

**4. Customer Responsibilities.** In addition to any Customer obligations set out in any Terms of Service, Customer will provide Apex, in a timely manner, with all data and information reasonably necessary for Apex to perform the Services and will provide and coordinate, in a timely manner, Apex's onsite access to any Customer facilities or Customer network or system (the "Customer System") as necessary. Customer will inform Apex in writing and in advance of the performance of any Services, of any security and access standards or requirements with respect thereto.

**5. Warranties.**

a. Apex warrants that it will use commercially reasonable efforts to make the Services available to Customer and its Authorized Employers and End Users; provided that Customer and its Authorized Employers and End Users have complied with the terms of this Agreement. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY IN THIS SECTION 5(a) IS REPERFORMANCE OF THE AFFECTED SERVICES.

b. Customer represents and warrants to Apex that (i) Customer has the full right, power and authority to grant the rights granted herein and to provide the Customer Data<sup>3</sup> and other Customer-provided materials for Apex's use; (ii) neither Apex's access to or use of the Customer Data will give rise to any action or claim by a third party or cause Customer to breach any of its agreements or understandings in relation to the Customer Data, including without limitation any terms of use to which is bound; (iii) the Customer Data will not contain any confidential or proprietary information of a third party that Customer does not have the right to provide; (iv) the Customer Data will not contain any Trojan horse, malicious code, or other computer software code, routines or device designed to disable, damage, impair, erase or deactivate any data via the Customer System to Apex's networks or systems; (v) the performance of its obligations and use of the Services by Customer or its Authorized Employers or End Users will not violate any applicable laws, including, without limitation, any laws relating to the collection, maintenance, transmission or use of personal information or data; and (vi) Customer will promptly pay all obligations when due, including, without limitation, obligations in respect of any payroll taxes, ERISA, 401(k) or pension distributions, either for its own account or on behalf of its Clients. The representations and warranties made by Customer in this Agreement will be automatically reaffirmed each time it submits Customer Data to Apex and each time Customer uses the Services.

c. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THESE GENERAL TERMS, THE SERVICES AND ALL COMPONENTS THEREOF ARE PROVIDED EXCLUSIVELY ON AN "AS IS" BASIS, AND APEX AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES OR SOFTWARE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. EXCEPT AS MAY BE OTHERWISE SET FORTH IN THE APPLICABLE TERMS OF SERVICE, APEX DOES NOT WARRANT THAT THE SERVICES OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. AS BETWEEN THE PARTIES, CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL DATA USED BY CUSTOMER OR ITS CLIENTS IN CONNECTION WITH THE SERVICES AND ALL DATA, INFORMATION, REPORTS AND OUTPUT OF THE SERVICES. CUSTOMER MAY NOT MAKE ANY WARRANTIES REGARDING THE SERVICES OR ANY COMPONENT THEREOF TO ITS CLIENTS, INCLUDING, WITHOUT LIMITATION, ITS AUTHORIZED EMPLOYERS, OR ANY THIRD PARTY ON BEHALF OF APEX.

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<sup>3</sup> "Customer Data" means (i) information or data created or otherwise owned by Customer or its Clients, or licensed by Customer or its Clients from third parties, and input in or otherwise used in conjunction with the hosted software Services provided by Apex under this Agreement (the "Hosted Services"); or (ii) information or data output generated by the Hosted Services that is based on information or data supplied by the Customer or its Clients and is specific to the Customer or its Clients, including, without limitation, including, without limitation, any information relating to the wages and salaries of employees or contractors of Customer, its Clients or the Authorized Employers, 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.

## **6. Limitation of Liability; Force Majeure.**

a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL APEX BE LIABLE TO CUSTOMER FOR (i) 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 THE SERVICES OR THIS AGREEMENT, EVEN IF APEX, ITS AFFILIATES OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS; OR (ii) DIRECT DAMAGES IN EXCESS OF (x) THE FEES PAID BY CUSTOMER TO APEX UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY OR (y) THE INITIAL FEES PAID BY CUSTOMER WITH RESPECT TO THE SERVICES AT ISSUE, WHICHEVER IS LESS.

b. THE PARTIES ACKNOWLEDGE THAT APEX HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

c. Neither party will be liable for and will not be responsible to the other for any delay or failure to perform under this Agreement if such delay or failure results from any act or cause beyond the reasonable control of the affected party. If either party is unable to perform under this Agreement because of the occurrence of an event of force majeure lasting more than thirty (30) days, then the other party may terminate the affected Service(s) and applicable Order(s) upon written notice to the other party.

## **7. Confidential Information; Nonsolicitation; Intellectual Property Rights.**

a. Each party acknowledges that it will have access to certain Confidential Information<sup>4</sup> of the other party, which will expressly include, but not be limited to, Apex Technology<sup>5</sup> (with respect to Apex) and Apex's customer and client information, but does not include (for purposes of this Section 7) Customer Data, the treatment of which is set forth in the Terms of Service applicable to the Hosted Services. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to such party's employees, attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will protect the confidentiality of the Confidential Information of the other party by employing the same measures (but in no event less than reasonable measures) as it takes to protect its own Confidential Information. The obligations of this Section 7 will last during and after the term of this Agreement. The receiving party may disclose Confidential Information pursuant to the requirements of a validly issued subpoena, governmental agency or by operation of law, provided that it gives the disclosing party, when practical and permitted, reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

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<sup>4</sup> "Confidential Information" means any and all proprietary and confidential data or information of a party disclosing information hereunder or any of its affiliates that is of tangible or intangible value to the disclosing party or its affiliates and is not public information or is not generally known or available to the disclosing party's competitors but is known only to the disclosing party and its employees, independent contractors or agents to whom it must be confided in order to apply it to the uses intended, but does not include data or information that is available to the public or in the public domain at the time of such disclosure without breach of this Agreement or other applicable law or that has been independently developed and disclosed by others not subject to an obligation of confidentiality

<sup>5</sup> "Apex Technology" means Apex's proprietary technology, including the Services, any proprietary software used to provide the Services, software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by Apex or licensed to Apex from a third party), including, without limitation, any derivatives, improvements, enhancements or extensions of the foregoing conceived, reduced to practice, or developed during the term of this Agreement by either party.

b. Each party recognizes that it the other party has legitimate business interests in protecting its relationships with its respective customers, clients and employees, and that the restrictions set forth in this Section 7(b) form an essential basis of the bargain between the parties. In recognition of these legitimate business interests, the parties agree as follows:

i. During the term of this Agreement, Apex will not, either directly or indirectly, on Apex's own behalf or on behalf of any other person or entity, solicit or attempt to solicit from any Client orders or contracts for the provision of payroll services to such Clients; provided, however, that the foregoing restriction will not apply to any Client that responds to a general solicitation or advertisement regarding the Services.

ii. During the term of this Agreement and for the two (2) year period following the termination or expiration of this Agreement, Customer will not, either directly or indirectly, on Customer's own behalf or on behalf of any other person or entity, solicit or attempt to solicit orders or contracts for the supply of any product or services that are similar to or compete with the Services to any other client or customer of Apex with whom Customer has had material contact with during the Term by virtue of Customer's relationship with Apex.

iii. During the term of this Agreement, Customer will not, either directly or indirectly, on Customer's own behalf or on behalf of any other person or entity, solicit, divert or hire or attempt to solicit, divert or hire, any person employed by Apex for a determined period, or at will, for the purpose of having such person perform duties of any nature for another person or entity. Moreover, during the two (2) years period following the termination or expiration of this Agreement, Customer will not, either directly or indirectly, on Customer's own behalf or on behalf of any other person or entity, solicit, divert or hire or attempt to solicit, divert or hire, any person employed by Company (x) for the purpose of having such person perform duties or provide services for any Competitor that are substantially similar to those duties performed or services provided by or on behalf of such employee to Company; and (y) with whom Customer had material contact during the two (2) year period immediately preceding the termination or expiration of this Agreement. The restrictions set forth in this Section 7(b)(iii) will only apply to those solicited employees that are employed by Apex at the time of solicitation or attempted solicitation.

iv. During the term of this Agreement and for the two (2) year period following the termination or expiration of this Agreement, Customer will not (x) 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 (y) hinder or interfere with Apex's business or its provision of services to its customers and end users.

c. 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 Services and all legally protectable elements or derivative works thereof, including, without limitation, the Apex Technology. Except for the limited licenses granted under this Agreement, Customer does not obtain any rights in the Services or Apex Technology pursuant to this Agreement, other than the right to use the same as specifically set forth herein. Apex may place copyright or other proprietary notices, including hypertext links, within the Services. Customer and its users will not alter or remove such notices without Apex's written permission. Notwithstanding anything to the contrary in this Agreement, Apex will not be prohibited or enjoined at any time by Customer or any user from utilizing any skills, knowledge or information of a general nature acquired during the course of providing the Services, including, without limitation, knowledge or information publicly known or available or that could reasonably be acquired in similar work performed for another client of Apex.

d. In the event of a violation or threat of violation by a party, directly or indirectly, of the terms of Section 7, the party who would be harmed by such violation, will have the right, and in addition to all other remedies available to it at law, in equity or under this Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction. Each party acknowledges that a violation of this section would cause irreparable harm and that all other remedies are inadequate.

**8. Indemnification.** Customer 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) (collectively "Losses") resulting from any claim, suit, action or proceeding (each an "Action") brought by any third party (including, without limitation, any Client or End User) against Apex arising out of or relating to (i) Customer's breach of its representations and warranties in this

Agreement (including, without limitation, any representations or warranties set forth in any Terms of Service) or failure to obtain, from any Client directly accessing and using the Services, such Client's written or electronic agreement to be bound by the Client Terms; (ii) its or an Authorized Employer's or End User's use or misuse of the Services or any of the products of the foregoing; (iii) any violations of another party's intellectual property rights, including, without limitation, trade secrets, copyrights, trademarks, patents or other proprietary rights caused by the Customer Data; (iv) Customer's negligence or willful misconduct; or (v) Customer's or a Client's failure to pay when due all payroll taxes, including, without limitation, federal, state or local income tax withholding amounts, FICA or social security taxes, and unemployment taxes, whether due with respect to Customer or its employees or agents or a Client or such Client's employees or agents, or any other payments or distributions required to be made by Customer or its Clients on behalf of their respective employees, independent contractors or agents. Apex will provide Customer with prompt written notice of the existence of any Action (provided, however, that the failure to provide prompt notice will not relieve Customer of its obligations hereunder, except to the extent such failure actually prejudices Customer), will permit Customer to control the defense of such Action (provided, however, that Customer may not settle any Action without the consent of Apex) and will provide Customer with reasonable cooperation with respect to the defense of such Action, at Customer's option and expense. Customer will permit Apex, at Apex's sole option and expense, to participate in the defense of any Action.

**9. Assignments.** Customer may not Assign (as defined hereafter) any of its rights, duties, or obligations under this Agreement to any person or entity, in whole or in part, and any attempt to do so will be deemed void and/or a material breach of this Agreement. Apex may freely Assign any of its rights or delegate any of its duties under this Agreement to any third party. As used in this Agreement, "Assign" means the transfer of any of the rights, duties or obligations of a party under this Agreement to any third party, including, without limitation, by way of contract; pursuant to the sale of all or substantially all of a party's assets or business; by virtue of the merger, share exchange or reorganization of a party; or pursuant to a transaction or series of transactions involving the sale or transfer of five percent (5%) or more of the issued and outstanding shares or equity interests of a party. Any attempted assignment, transfer or other disposition by a party in violation of this provision will be null, void and of no force and effect. This Agreement will inure to the benefit of and be binding upon the permitted successors, legal representatives and assigns of the parties hereto.

**10. Marketing.**

a. During the term of this Agreement, each party will have the right to disclose that Customer is a customer of Apex and a reseller of the Services. In furtherance of the foregoing, during the term of this Agreement, Apex grants Customer a nonexclusive, nontransferable, cancelable and limited license to use those trademarks and service marks approved by Apex for such use by its Customers from time to time (the "Marks") only to identify Apex as the provider of the Services in connection with Customer's advertising, promotion, marketing and provision of the Services to its customers and potential customers. Customer agrees to use the Marks only in compliance with Apex's logo and trademark usage guide, as provided to Customer by Apex and as may be updated from time to time in Apex's sole discretion. Customer agrees that the Marks have acquired secondary meaning and that its use of the Marks will inure to Apex's benefit. Customer will immediately notify Apex of any unauthorized use of the Marks by any other person, firm or corporation as soon as such unauthorized use comes to Customer's attention. Apex will have the sole right to commence or defend any proceedings involving the Marks, in its sole discretion.

b. Certain Services may permit Customer to configure the user interface of such Service to display Customer's or its Clients' trademarks or service marks (collectively, the "Customer Marks") for the purpose of "white labeling" such Service. To the extent Customer elects to utilize such features and provides and distributes any Customer Marks via the Services, (i) Customer grants Apex and its suppliers a nonexclusive, nontransferable, limited license to use and display the Customer Marks as provided by Customer and in connection with the Services; and (ii) Customer represents and warrants that (x) Customer has the full right, power and authority to grant the rights granted herein and to provide the Customer Marks for Apex's use; (y) Apex's use and display of the Customer Marks will give rise to any action or claim by a third party or cause Customer to breach any of its agreements or understandings in relation to the Customer Marks; and (z) the Customer Marks, and Apex's use thereof, do not infringe, violate or misappropriate any proprietary rights of a third party.

c. Customer agrees and acknowledges that Apex may, and may permit its approved third party partners to, promote and market Apex's and its' partners' products and services to Customer and its Clients via the Services.

**11. Notices.** Except as otherwise set forth herein, all notices will be in writing and will be deemed to be delivered when received by a nationally recognized overnight courier or when sent by confirmed e-mail, with a copy promptly sent via first-class mail. All notices to Apex will be directed to 500 Colonial Center Parkway, Suite 650, Roswell, Georgia 30076, Attn: Legal Department, Email: [agreements@apexhcm.com](mailto:agreements@apexhcm.com). All notices to Customer will be as set forth on the execution page of this Agreement. General information regarding the Services (such as scheduled maintenance information) may also be provided by posting on the Services only. Upon account setup of any hosted Services provided under this Agreement, Customer may designate additional contacts for various types of notices. Apex recommends that the main contact and billing contact email addresses be group addresses (such as [billing@customer.com](mailto:billing@customer.com)) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, Apex may rely and act on all information, authorizations and instructions provided to Apex from the above-specified e-mail address and Customer administrators.

**12. General.** The headings in this Agreement are provided for convenience only and will not affect its construction or interpretation. The parties and their respective personnel are and will be independent contractors, and neither party by virtue of this Agreement will be an agent of the other party. No waiver, amendment or modification of any provision of this Agreement will be effective unless it is in writing, refers to this Agreement, and is executed by both parties as described on the execution page of the MSA. The deemed unenforceability of any part of this Agreement in any circumstance will not affect the remainder of the Agreement. The parties agree that the Agreement should not be more strictly construed against one party than the other. This Agreement and all obligations of the parties hereunder will be governed by the laws of the State of Georgia, without regard to any conflict of laws rules or analyses. Any action or proceeding arising from or relating to this Agreement must be brought in a state or federal court having jurisdiction in Cobb County, Georgia, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding and agrees to waive any defenses to venue and jurisdiction including forum non conveniens. The United Nations Convention on Contracts for the International Sale of Goods is excluded from application to this Agreement. No action arising out of this Agreement, regardless of the form, may be brought by either party more than two (2) years after the cause of action has arisen, or the date of last payment made by Customer, whichever is later. Time is of the essence hereof. Other than the indemnified parties described in Section 8 of these General Terms, there are no third party beneficiaries to this Agreement.

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