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APEX SYSTEMS CONSULTING INC. MASTER SERVICES TERMS & CONDITIONS

ATTENTION:

THESE MASTER SERVICES TERMS & CONDITIONS ("Master Terms & Conditions") ARE INCORPORATED BY REFERENCE INTO ALL STATEMENTS OF WORK, SCOPE OF WORK AGREEMENTS (as the case may be), AND ANY AND ALL AGREEMENTS FOR THE PROVISION OF SERVICES BY APEX SYSTEMS CONSULTING INC. (a Canadian corporation having a place of business at 460 Brant Street 3rd Floor, Burlington, ON, L7R 4B6), AND ANY OF ITS SUBSIDIARIES.

NOTE:

THESE MASTER SERVICES TERMS & CONDITIONS ARE SUBJECT TO CHANGE. THE COUNTERPARTY TO ANY AGREEMENT IS ADVISED TO REVIEW THIS DOCUMENT ON THE FOLLOWING WEBPAGE:

<http://www.apex1.ca/documents/ASC024-MasterServicesTermsAndConditions.pdf>

FOR THE MOST RECENT VERSION BEFORE ACCEPTING ANY CONTRACT FOR SERVICES WITH APEX.



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ARTICLE 1- DEFINITIONS

For the purposes of these Master Terms & Conditions, these terms shall have the following meanings:

“Acceptance Criteria” – predetermined criteria and applicable test data.

“Agreement” or “Master Terms & Conditions” or “Master Services Agreement” means these Master Terms and Conditions.

“Company Data” means the materials, data, personal information (identifiable or otherwise), or business records that are to be imported or collected, stored, displayed, processed and maintained by Apex as part of any displayed Database(s) that forms an integral component of a Software Application.

“Company Content” means the “Content” supplied to Apex for use in the provision of Services.

“Confidential Information” has the meaning set out in ARTICLE 7.

“Content” means all text, pictures, sound, graphics, video and other data which are to be displayed as part of the Software Application, as modified from time to time.

“Control” means, in respect of a party, the ability to direct the business and affairs of that Party whether by share ownership, voting power, contract or otherwise.

“Deliverables” means a deliverable (product or service) or license to use a Software Application as set out in a SOW.

“Effective Date” means the date these Master Terms & Conditions became effective, as set out in the opening paragraph.

“Event” means any event or series of events identified by Company for which Services and/or Deliverables are ordered through a SOW.

“Expenses” has the meaning set out in ARTICLE 5.

“Apex Content” means the “Content” supplied by the Apex for use in the provision of Services.

“Apex Tools” means any tools, both in executable code and source code form, which Apex has already developed or which Apex independently develops or licenses from a third party that are to be used in conjunction with, as part of, or as part of the hosting of the Software Application.

“Fees” has the meaning set out in ARTICLE 5.

“Flow through Expenses” means those expenses incurred by Apex in the performance of Services specifically on behalf of Company (and which are usually initially payable to third party providers).

“Host” or **“Hosting”** when used in reference to a Software Application or Web Application means the hosting of the Software Application on the Internet from Apex’s current collocation/server farm facilities (or as otherwise specified in the SOW) in accordance with Service Levels as attached to the relevant SOW.

“Intellectual Property” means intellectual property that is protected by IP Rights.

“IP Rights” or **“Intellectual Property Rights”** means all rights, title and interest in and to any and all intellectual and industrial property, including but not limited to semiconductor topography rights, mask works rights, patents, copyrights, trade-marks (including service marks), trade secrets and design rights, whether registered or unregistered, and including any application for registration of any of the foregoing and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, whether registerable or not, and, in the case of **Apex**, includes all Intellectual Property Rights contained within or pursuant to the

Services and Deliverables (including the Scope Statement) subject to Company's rights in and to Company Content.

"Master Timeline" means the master schedule for a group of SOWs ("Related SOWs") that sets out the Milestone Delivery Schedules in respect of these Related SOWs. The Parties acknowledge the interdependency of important dates and timelines for such related SOWs as well as the need to properly allocate resources and determine priorities among competing SOWs or Projects or phases within an SOW. This Master Timeline document is intended to be a dynamic schedule that is continually updated, reviewed and revised to meet the current objectives of both Parties under the Related SOWs given available resources and is subject to a bi-weekly revision by the Apex and corresponding acceptance by Company (as revised) through email correspondence.

"Milestone Delivery Schedule" means the schedule for the delivery of Services and/or Deliverables as set forth in an SOW or a Project Plan.

"Party" means either of the parties to these Master Terms & Conditions and **"Parties"** means both of the parties to this Master Terms & Conditions and a SOW, namely, Apex Solutions Consulting Inc. and the party identified in the preamble to the applicable SOW.

"Services" has the meaning set out in Section 2.3.

"Service Levels" means the levels at which the various Apex Services are to be provided as set out in Schedule B.

"Scope Statement" means the written specifications which describe the scope of the to-be developed or to-be enhanced Software Application as set out in each SOW, or to be developed by the Apex pursuant to a SOW. These can be of a formal or informal nature.

"Software Application" means a software application to be delivered and accessed via a website (see earlier definition of "Application Website") with a unique URL on the Internet by the general public or by Company specified users and includes any relevant Databases. Software Applications developed by the Apex are generally comprised of two parts: the User or publicly accessible **'front end,'** and the administrative and Company only accessible **'back end.'** For the purposes of this Master Terms & Conditions, the term Software Application also includes: the corresponding Application Website, and Database.

"Statement of Work" (or "SOW") has the meaning set out in Section 2.2.

"Term" has the meaning set out in ARTICLE 6: TERM & TERMINATION.

"User Content" means the Content supplied by any User for use in a Software Application.

ARTICLE 2 – THE SERVICES

- 2.1 **Scope of the Master Terms & Conditions.** Under this Master Terms & Conditions, Apex agrees to provide services as requested by the Company from time to time pursuant to a mutually agreed statement of work ("Statement of Work") and the terms and conditions of these Master Terms & Conditions. Company may request and the Parties may negotiate and contract for multiple projects ("Project" or "Projects") from time to time through the issuance of Statements of Work (as set out below). If the Project is in relation to an Event, the name, place and timeframe for the Event will also be specified. If the Project involves a Software Application, the name of the Software Application and corresponding Domain Name will also be specified.

- 2.2 **Statements of Work (SOWs).** The specific services to be provided and related terms and conditions of each Project under this Master Terms & Conditions shall be separately negotiated and specified in writing in a form acceptable to Company and to Apex. Each Statement of Work shall be detailed in the form of the sample Statement of Work attached hereto as Schedule A.

It is contemplated that there will be distinct Statements of Work with respect to the different types of services to be supplied by Apex. Each SOW will specify any Expenses related to that SOW. Each fully executed Statement of Work shall be attached to these Master Terms & Conditions as an exhibit and shall be incorporated herein by reference. The first Statement of Work is attached hereto as Exhibit 1 and all subsequent Statements of Work shall be attached and numbered consecutively.

- 2.3 **Nature and Type of Services.** The services covered by this Master Terms & Conditions may include software development, software licensing, hosting of software over the Internet (as an application service provider or "ASP"), software support and maintenance, training, data backup and security, and such other services as may be requested by Company and agreed to by Apex, and as set out in an approved Statement of Work (collectively, the "Services").

- 2.4 **Change Orders.** In the event that Company desires to change the Statement of Work regarding the scope of the Services, the Specifications, the deliverables or any other aspect of the Statement of Work, Company shall submit to Apex a change order ("Change Order") request, on which Company shall describe the exact nature of the changes requested. Within a reasonable time thereafter, Apex will provide Company with at minimum the following information in a written Change Order: (i) Apex's proposal for implementing the requested change; (ii) the amount of additional fees, if any, payable to Apex as a result of the proposed Change Order; and (iii) the impact, if any, on the Milestone Delivery Schedule (or Master Timeline, as the case may be), or the effect, if any, on any other SOW pursuant to these Master Terms & Conditions arising from the proposed change order.

Within five (5) business days after receiving Apex's proposed Change Order, Company shall accept or reject same by written notice to Apex; otherwise, the Change Order shall be deemed rejected. No Change Order shall be binding upon either party unless signed by both parties. Upon execution by both parties, a signed Change Order shall amend the original Statement of Work and become a part thereof. Notwithstanding the foregoing, Apex shall have the right to refuse a Change Order request for any reason in its sole and absolute discretion. Company shall pay Change Order invoices within ten days of receipt of such invoice.

- 2.5 **Direction of Services through Project Management.** Company and Apex shall each designate a representative to serve as the primary liaison with respect to each Statement of Work, (a "Project Manager") with the Company representative having the right to make all final decisions with respect to a specific Project. In addition, the Company and Apex shall each appoint a Lead Contact for the purposes of the administration of these Master Terms & Conditions.

- The first Lead Contact for Apex is **Kyle Booth, President & CEO.**

Each Statement of Work shall be signed by an authorized officer of each of the Parties and shall include, as appropriate, a Project Management Plan or timeline for its delivery (see below), the scope of Services and/or Deliverables to be provided by Apex, the responsibilities of both Parties, and the Milestone Delivery Schedule or Master Timeline (or a timeline for its delivery), the term, and the Fees and Expenses together with a payment schedule. Unless and to the extent stated in any Statement of Work, each Statement of Work shall be subject to all of the terms and conditions of the Master Terms & Conditions, in addition to the specific terms and conditions set forth in the Statement of Work. In the event that any terms or conditions of a Statement of Work conflict with the terms and conditions of this Master Terms & Conditions, the terms and conditions of the Master Terms & Conditions shall

control, except to the extent where the applicable Statement of Work expressly and specifically states an intent to supersede the Master Terms & Conditions in relation to a specific provision.

- 2.6 **Provision of Project Management Plan.** Apex will develop a “Project Management Plan” that will describe Apex’s roles and responsibilities in relation to those of the Company in the delivery of the Services and Deliverables. The Project Management Plan will present the specifics and timing (e.g., weekly, monthly or quarterly) of the reports to be provided to Company by Provider.
- 2.7 **Project Team Approach to Delivery of Services.** Apex manages all Projects according to a Project Team approach, led by a Project. The Apex Project Manager will have the primary responsibility of communication with Company for overall project information for the duration of the Project. Apex will plan bi-weekly consultations (via teleconference or in person) with Company that will include the Project Manager, and other key functional area personnel, as required. During each meeting, critical issues, unexpected problems and trends or the need for new services or enhanced functionality of Services and/or Deliverables will be identified and discussed. In addition, the Milestone Delivery Schedule and/or the Master Timeline (as the case may be) will be set and reviewed and timelines for all departments working on the project will be discussed. The need for any changes to the Milestone Delivery Schedule or the Master Timeline (as the case may be), the scope of the Project (Change Orders – see above) will be examined and resolved.

Where Company has paid in advance or is committed to pay Fees on a periodic (for example, monthly) basis, then Company may re-prioritise the work of team resources or de-scope features from any Statement of Work as it sees fit subject to agreeing to any changes to the Milestone Delivery Schedule and/or Master Timeline (as the case may be). Following the completion of the relevant SOW and any Related SOWs, the parties agree to reconcile payments made pursuant to all the Related SOWs against Services provided on or before the expiry of 30 days from the completion of the Services under the Related SOWs and to pay or refund any additional amounts by the expiry of 30 days after such reconciliation being agreed.

- 2.8 **Company Content.** Company acknowledges and agrees that Apex’s completion of deliverables in accordance with the applicable Delivery Schedule under a Statement of Work is dependent and conditioned upon the reasonable cooperation of Company and timely receipt (at no charge to Apex) by Apex of all materials and content to be provided by Company. Accordingly, all materials and content to be provided to Apex or otherwise identified as “Company Content” under a Statement of Work shall be delivered to Apex in strict accordance with the schedule therefore, TIME BEING OF THE ESSENCE, in the proper form and format. Any delay in the proper delivery of any Company Content to Apex shall, unless otherwise agreed to in writing, automatically result in a corresponding extension of Apex’s Delivery Schedule without the necessity of notice. Any delay of delivery of Company Content that continues for five (5) or more business days shall be a material default hereunder and, in such event, Apex at its option may suspend performance of the Services and renegotiate the Delivery Schedule of the deliverables under the applicable Statement of Work prior to the resumption of its performance of the Services.
- 2.9 **Delays by Company.** Unless provided for otherwise under these Master Terms & Conditions or a particular Statement of Work, Apex shall not be responsible for any delay in performance or failure to meet its obligations under these Master Terms & Conditions or any Statement of Work that is caused, directly or indirectly, by (a) Company’s failure to cooperate; (b) the consistent unavailability and/or unresponsiveness of Company’s representative; (c) undue delays in delivery of the Company Content or any portion thereof; or (d) any event beyond Apex’s reasonable control including, but not limited to, fire, flood, earthquake, strike, embargo, or shortage of suitable parts, material, or labour.
- 2.10 **Delays by Apex.** Unless provided for otherwise under these Master Terms & Conditions or a particular Statement of Work, Company shall not be responsible for any delay in performance or

failure to meet its obligations under these Master Terms & Conditions or any Statement of Work that is caused, directly or indirectly, by (a) Apex's failure to cooperate; (b) the consistent unavailability and/or unresponsiveness of Apex's representative; (c) undue delays in delivery of the Apex Content or any portion thereof; or (d) any event beyond Company's reasonable control including, but not limited to, fire, flood, earthquake, strike, embargo, or shortage of suitable parts, material, or labour.

ARTICLE 3 – PROVISIONS ATTACHED TO SPECIFIC STATEMENTS OF WORK

- 3.1 **Applicability of this ARTICLE 3.** The provisions contained within this ARTICLE 3 shall apply ONLY to those SOWs that specifically indicate the applicability and operation of this Article with respect to the Services outlined therein.
- 3.2 **Software Application Development.** Apex will develop, modify or enhance its proprietary Software Application using a Modified Software Delivery Process, which is an iterative process accounted for in accordance with the Project Plan and/or **Milestone Delivery Schedule and/or Master Timeline** (as the case may be). This process may include the development of a Project Plan that involves the acceptance of one or more Component Scope Statements by the Company and may contain Milestone Delivery dates. Apex shall ensure that Company has approved the usability and 'look and feel' of both Front and Back End screen layouts if applicable prior to commencing any development. All Milestone Delivery Dates are firm.
- Apex is responsible for the development of the individual Component Scope Statement's for a to-be developed or a to-be enhanced or to-be modified component of the Software Application. The Company must approve, in writing, of these Scope Statements prior to Apex beginning development of the Component. During this process, Apex will make the Software Application available to be tested by Company in accordance with the Testing and Acceptance Procedures in Section 3.3 below.
- 3.3 **Testing Procedures – scope, functionality and error correction and acceptance development.** Apex is responsible for the development and deployment of the initial test plans for the Software Application based on any functional specifications and/or Scope Statements developed by Apex that make up the Project Plan, or any subsequent SOW and/or Change Order and shall be subject to the Company's approval. At minimum, such test plans must be designed to show that the Software Application has the functionality and operates as required by the applicable Scope Statement or as may otherwise be noted as "Acceptance Criteria" in the relevant SOW ("Acceptance Criteria"). Upon Apex's request, Company will provide the necessary test data consistent with the corresponding functional specifications or Scope Statement and in accordance with delivery dates set out in the Milestone Delivery Schedule and/or Master Timeline. The test plans and data are to cover the widest range of possible transactions (from the most common to the least common) that the Software Application may be required to process, including a set of defined business cases and a data set as set out in the relevant SOW.
- 3.4 **Testing by Company.** Apex shall not provide the Software Application to Company for testing until Apex is satisfied that the Software Application meets the Acceptance Criteria. Apex shall provide Company with a copy of the relevant test plans and test results prior to Company conducting any tests. Following provision by Apex, Company will test the Software Application. If the Software Application satisfies the Acceptance Criteria, Company will accept the Software Application or Deliverable in its final form. If not, Company may still accept the Software Application, subject to any further conditions Company may stipulate (including without limitation that Apex promptly fix any defects, errors or bugs), or may reject such Software Application or Deliverable, by providing a written explanation of the reasons for such rejection. In the event of any dispute as to whether the Acceptance Criteria have been satisfied, the parties shall resolve the dispute in accordance with ARTICLE 17 below.

- 3.5 **Business Processes Testing Procedures.** The Company will be required to provide comment (as appropriate under the circumstances and at the request of Apex) during all stages of its development sufficient to ascertain that a functional element of the Software Application fits appropriately with Company's business processes, such that Apex may appropriately advance the development of the Software Application or Deliverable in accordance with the Project Plan and/or Milestone Delivery Schedule and/or Master Timeline.
- 3.6 **Configuration.** The Company shall be solely responsible for configuring any Software Application prior to its first use, save those instances where a SOW provides for an application specialist to perform said configuration.
- 3.7 **Late Delivery.** Without prejudice to Company, remedies for late delivery shall be addressed on a case-by-case basis under each SOW.
- 3.8 **Software Application Hosting.** Apex will Host any Software Applications and Website Applications in accordance with the Service Levels as set out in Schedule B.
- 3.9 **Software Application Support.** Apex will provide software support to the Company and the employees of the Company) in accordance with this paragraph and as specified in each SOW for the relevant specified time frames.
- 3.10 **Maintenance Release.** An annual maintenance release which may be an *update* (program revisions, minor enhancements) or an *upgrade* (a new version of core technology including significant addition of functionality or other major improvement for the underlying proprietary technology of a Software Application) shall be released, installed and Hosted by Apex in consultation with Company or as set out in the relevant SOW. Such releases shall be compatible with and not adversely affect the functionality of the Software Application unless Company is at least two versions behind the current release of the core technology upon which the Software Application is based. Annual maintenance releases in respect of customized elements of proprietary technology (by way of example, third party integration modules) included in any Software Application or Deliverable may not be included in an annual maintenance release unless Company has first given its approval and the parties have negotiated the applicable fee to include a maintenance release for those additional elements.
- 3.11 **Security for Apex Systems.** Apex and Company will implement industry standards and measures to prevent unauthorized access to Software Application(s) and any Database generated from or used in conjunction with a Software Application. Apex and Company will notify each other of any known or suspected security breaches or vulnerabilities, and each will comply with any specific security measures set forth in a SOW. Company will take all commercially reasonable measures to prevent unauthorized use of any user names or passwords which permit access to the Back End of an application Website. Apex will use the industry standards and measures to prevent unauthorized access to the Software Applications and Databases and the Hosting facilities as further set out in the Service Levels to be attached to the relevant SOW. All Application Websites will be designed using SSL (Secured Socket Layer) 128-bit encryption technology and designed to be accessed by Users using the two (2) most recent versions of Microsoft's Internet Explorer.

ARTICLE 4 – GENERAL PROVISIONS APPLICABLE TO ALL SOWS

- 4.1 **Timely Provision by Apex.** Apex will provide the Services and Deliverables for a Project according to the Milestone Delivery Schedule set out in a SOW or set out in the Project Plan (which may be included in the SOW) or set out in a Master Timeline and in accordance with the Scope Statement, whether formal or informal. Apex shall provide Company with regular reports (as mutually agreed to both

Project Managers) of the progress of the Project to date, any anticipated problems (resolved or unresolved), and any indication of potential delays to the Milestone Delivery Schedule and/or Master Timeline.

- 4.2 **Notification of Potential Delay.** If either Party is aware or becomes aware of any delay or circumstance that will prevent the Company or Apex from meeting any part of the Milestone Delivery Schedule and/or Master Timeline, that Party will promptly inform the other party of the delay, the reason for the delay, possible courses of action to alleviate or minimize the delay (including but not limited to increasing resources, adjusting Fees and Expenses to provide such resources), and the additional time required because of the delay, to meet the delivery date, and the Parties will consult with each other with a view towards setting new and appropriate dates and amending the Milestone Delivery Schedule and/or Master Timeline and, if necessary, issuing a Change Order (although Company will not be obliged to agree to any amendment or Change Order).

ARTICLE 5 – PAYMENT OF FEES AND EXPENSES

- 5.1 **Terms of Payment.** Apex's compensation and payment for the Services and Deliverables provided shall be as set forth in each applicable Statement of Work (the "Fees & Expenses") as amended by any Change Orders and shall allocate Fees to the categories set out later in this Section. Apex shall invoice Company on a monthly basis for the Fees & Expenses it incurs in performing the Services and Company shall pay such invoice on the date due as specified in the applicable SOW(s).
- 5.2 **Effect of Late/Non-Payment.** Where a SOW dictates payment terms other than monthly invoices, Company shall make such payments in strict accordance with the payment terms contained therein. In the event that Company fails to pay an invoice by the due date or make a scheduled payment on the payment date, in addition to any other rights Apex may have in law and/or equity, at its option and in its sole discretion, Apex may suspend all work under the relevant SOW (including terminating the Hosting of a Supported Application where the non-payment is in respect of a Hosting SOW) until the invoice is paid in full. In addition, if any amount payable to Apex by Company is not paid by the due date(s) set out in the relevant SOW or invoice, interest shall be charged on the overdue amount (in addition to any pre- or post- judgment interest added by a court of competent jurisdiction) on a daily basis from the due date to the date of actual payment (both dates inclusive) at the rate of two percent (2%) per month compounded quarterly, such interest to be paid by Company to Apex upon demand by the latter. All Milestone Delivery Dates under an SOW and Project Plan shall automatically be extended forward one day for each full day that an undisputed regularly scheduled payment under a properly submitted invoice is not paid in full.
- 5.3 **Deposit.** Apex reserves the right to require a deposit from Company in an amount equal to Apex's estimate of the aggregate of Company's charges for a six-month period for each Statement of Work attached hereto. Apex shall refund to Company the deposit, without interest, within thirty (30) days of the expiration or termination of the applicable Statement of Work. Apex reserves the right to and Company acknowledges that Apex has the right to deduct from such deposit any amount owed to Apex by Company as at the date of expiration or termination, including any amount owed as a result of Company's default under these Master Terms & Conditions.
- 5.4 **Early Termination Charge.** In the event that following Apex's commencement of work pursuant to a Statement of Work, Company terminates all or part of such Statement of Work before the conclusion of the stated term, Company shall be assessed an early termination charge. Such charge shall be the amount payable under the applicable Statement of Work for the balance of the stated term and shall be payable as liquidated damages and not as a penalty.

- 5.5 **Payment of Taxes.** Company agrees to pay when due (or reimburse Apex for) all sales, use, withholding and other taxes including VAT or GST, which Apex is at any time obligated to pay or collect in connection with the Services and Deliverables, except any taxes based on Apex's net income arising under Apex's engagement with Company. Any delay by Apex in collecting any such taxes will in no way release Company from its obligation(s) under this Section. The parties will consult with one another about the tax implications of the Services and Deliverables to be provided in each budget prepared under an SOW as part of the SOW initiation process.
- 5.6 **Reimbursement of Expenses.** Subject to provision of suitable receipts or other evidence acceptable to Company acting reasonably, Company shall reimburse Apex for all reasonable pre-approved out-of-pocket expenses and disbursements actually incurred which are customary and necessary to the provision of the Services and Deliverables which a) Company has approved in advance in writing; or b) are specifically set out as being subject to reimbursement in a SOW or Change Order.
- 5.7 **Flow Through Expenses.** Where set out in an SOW, an administrative fee of fifteen percent (15%) will be applied to any 'flow through' Expenses, provided that Apex uses its best efforts to notify Company in advance of such Expenses and where reasonable, and permit Company to provide or propose alternative sourcing.
- 5.8 **Prior Approval Required.** The Company will not be liable to pay for any additional service, software or material supplied by Apex unless that service, software or material and the charges for it have first been approved by the Company's representative orally or in writing. If the approval is oral, it shall be immediately be followed by a confirmation in writing (email acceptable).

ARTICLE 6 – TERM & TERMINATION

- 6.1 **Term.** This Master Terms & Conditions, when fully executed, shall be effective on the "Effective Date" set out in the opening paragraph and shall continue until terminated by the terms contained therein. Such Term shall be renewed automatically by mutual agreement of the parties, unless sooner terminated by either party in accordance with this ARTICLE 6, or by providing the other party with advance written notice of no less than ninety (90) days prior to the end of the then current Term of its intent to not renew the Term.
- 6.2 **Termination on Default with Notice.** Either party may terminate these Master Terms & Conditions or a Statement of Work upon the occurrence of a material breach by the other party, which material breach has not been cured within sixty (60) days after receipt of written notice thereof by the breaching party from the other, unless the cause for termination is a failure to pay, in which event these Master Terms & Conditions may be terminated upon five (5) calendar days' notice by Apex.
- 6.3 **Effect of Termination.** Except as provided in these Master Terms & Conditions, termination by either party in accordance with the terms of these Master Terms & Conditions shall not be exclusive or limit the terminating party's other rights or remedies available at law or in equity, or under these Master Terms & Conditions. Also, if these Master Terms & Conditions terminates prior to the payment in full of all Fees under any particular Statement of Work, the licence or assignment under the applicable SOW shall not be granted with respect to any Deliverables under such unpaid Statement of Work and all such Deliverables shall be returned to Apex.
- 6.4 **Rights and Obligations upon Termination.** The parties' respective rights and obligations on termination (the "Effective Date of Termination") are as follows:

The Lead Contacts of the Company and Provider shall meet or conference call within two (2) days following the Effective Date of Termination (or prior to such date by mutual agreement) to review the number and state of all outstanding Statements of Work. A mutual decision shall be made with respect to which Statements of Work will be completed and which Statements of Work will terminate and how and when with a view towards providing the least disruption and best service for the parties' respective customers and clients;

- 6.5 In addition to any other remedy or rights Apex may have under these Master Terms & Conditions, save where this Master Terms & Conditions and/or relevant SOW has been terminated by Company due to default by Apex or by Company pursuant to Section 6.2, Apex shall be entitled to retain (and Company obligated to remit within 30 days of the Effective Date of Termination as the case may be following receipt of an itemized invoice) in respect of all SOWs that are being terminated, all Fees and Expenses allocated to any Deliverable(s), all Fees allocated to Hosting, support, maintenance and error correction up until the month following the Effective Date of Termination or until Hosting actually ceases, whichever is later, all fees allocated to the development and set up and any customization of any Software Applications which have gone "live" or are about to "go live", and, if applicable after consideration of the fees already remitted and owing, an equitable portion with respect to all the other Services in respect of all outstanding SOWs being terminated;
- (a) Apex shall cease hosting any Software Application and cease providing any other Services, and provide 'AS IS', without warranty, the Company Data in respect of each applicable SOW in a digital format reasonably acceptable to Company provided reasonable assurances and/or security have been made that satisfy Apex (in its sole discretion) that Company will comply with its obligations in respect of fees set out in subparagraph 6.5 above;
 - (b) All other rights and licenses granted to Company shall terminate and all other obligations of Apex to Company shall cease (except those set out in subparagraph 6.5(d) and 6.5(e) below respecting termination assistance);
 - (c) Notwithstanding all of the above, all obligations of both parties respecting ARTICLE 5 (Payment of Fees and Expenses), ARTICLE 18 (Compliance with Regulatory Issues), ARTICLE 14 (Mutual Indemnities), ARTICLE 15 and ARTICLE 16 (Warranty and LOL), ARTICLE 21 (Non Interference with Employees), and ARTICLE 23 (Force Majeure) shall remain in full force and effect as shall any covenants, representations and warranties set out in individual SOWs relating to the same subject matter as is contained in any of the paragraphs cited in this Section 6.5(c);
 - (d) Notwithstanding the above, in the event that the Parties mutually agree that Apex will be completing certain outstanding Service SOWs even after termination, this Master Services Agreement shall remain in full force and effect, but only with respect to the SOW(s) being completed by Apex, and only until the completion of that final SOW;
 - (e) Both parties working cooperatively shall take such other steps (including dealings with all relevant third parties) as may be necessary for both parties to facilitate a smooth termination of their former business relationship and to ensure continued services to *mutual* customers and clients;
- 6.6 **Termination Assistance.** Apex will provide on a time and materials basis, on written request of Company, the assistance reasonably necessary to enable the Services to continue without interruption if possible or alternately with the least disruption and to facilitate the orderly transfer of the Services (save and except any license to use a Software Application, nor any of Apex's Intellectual Property, nor any Company Content or Apex's Tools) from Apex to the Company or its newly designated software developer and/or application service provider.

ARTICLE 7 – CONFIDENTIAL INFORMATION

- 7.1 **Meaning of Confidential Information.** The Parties acknowledge they will have access to certain confidential information that relates to the business or affairs of the other party, its affiliates, clients or suppliers and is confidential or proprietary to, about or created by the party, its affiliates, clients, or suppliers. Confidential Information includes, but is not limited to, the following types of confidential information and other proprietary information of a similar nature (whether or not reduced to writing or designated or marked as confidential):
- (a) computer software of any type or form and in any stage of actual or anticipated development, including but not limited to, programs and program modules, routines and subroutines, procedures, algorithms, design concepts, design specifications (design notes, annotations, documentation, flowcharts, coding sheets, and the like), source code, object code and load modules, programming, program patches and system designs;
 - (b) work product resulting from or related to work or projects performed for or to be performed for Company or its affiliates, including but not limited to, the interim and final lines of inquiry, hypotheses, research and conclusions related thereto and the methods, processes, procedures, analysis, techniques and audits used in connection therewith;
 - (c) information relating to Deliverables prior to any public disclosure thereof, including but not limited to, the nature of the Deliverables, production data, technical and engineering data, test data and test results, the status and details of research and development of products and services, and information regarding acquiring, protecting, enforcing and licensing proprietary rights (including patents, copyrights and trade secrets);
 - (d) internal party personnel and financial information, vendor names and other vendor information, purchasing and internal cost information, internal services and operational manuals, and the manner and method of conducting the party's business;
 - (e) marketing and development plans, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of the party that have been or are being discussed; and
 - (f) all information that becomes known to the one party as a result of its engagement with the other party and that it, acting reasonably, believes is confidential information or that the party possessing such information takes measures to protect.
- 7.2 **Other Specific Confidential Information.** Without limiting the foregoing, Apex's Confidential Information also includes, but is not limited to: technology, the source and object code of the Software Applications and the Application Websites, the 'look and feel' of the Software Applications and Application Websites, the database architecture of the Software Applications, information respecting customers, clients, employees, independent contractors of either party or delegates and attendees of the various Events, and the trade secrets of the Parties.
- 7.3 **Information not Considered Confidential.** Information will not be deemed Confidential Information if such information (i) is known to the receiving Party prior to the receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of

confidentiality; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Master Terms & Conditions or a SOW by the receiving Party; or (iv) is independently developed by the receiving Party.

- 7.4 **Use of Confidential Information.** The Parties agree that neither Party will use in any way, for its own use or the use of any third party, except as expressly permitted by, or required to achieve the purposes of this Master Terms & Conditions or any subsequent SOW, nor disclose to any third party (except as required by law or to that party's solicitors, accountants and other advisors as reasonably necessary), any of the other Party's Confidential Information and will take all necessary and reasonable precautions to protect the confidentiality of such information, and at minimum shall employ accepted industry standards regarding such protection.
- 7.5 **Disclosure of Confidential Information.** The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing Party to contest such disclosure.

ARTICLE 8 – INTELLECTUAL PROPERTY

- 8.1 **Use of Intellectual Property.** The contents of all proposals, assessments, quotes, responses or requests for information, online or written reports, documents, contracts, agreements, specifications, Scope Statement, Software Applications, presentations, software and documentation prepared, made or written or developed by Apex for Company or other Apex client(s), all advice given by Apex to Company, all the methodologies and Apex Tools used by Apex in working for Company and the results of the work done and services provided by Apex, are for Company's use only. Company agrees not to divulge them to any third party (save to the extent required by Company in order to conduct its normal day to day business and then only if written NDAs are in place prescribing to the same standard of confidentiality set out in this Article) or use them for any purpose other than for the purpose of performing Company obligations or utilizing Services in accordance with this Master Terms & Conditions and any resulting SOW(s).
- 8.2 **Ownership of Intellectual Property.** Unless expressly stated otherwise in a SOW, the Intellectual Property Rights in all assessments, Scope Statement, Software Applications, Application Websites including any other Deliverables (but excepting Company Content and User Content), their look and feel – (if not branded to match Company styles of look and feel), the documentation, the URLs for the Application Websites, all specifications, reports and other materials which Apex produces or supplies, or Hosts, and all ideas, methodologies, inventions, discoveries, designs, concepts and work arising from any services that Apex provides will, as between Company and Apex, belong to Apex, subject to Company's rights in and to Company Content, Company Data and the content of all Databases. If requested by Apex, Company will reasonably assist at Apex's expense to enable Apex to enjoy, defend and enforce these Intellectual Property rights.

ARTICLE 9 – COMPANY DATA PROTECTION

- 9.1 **Personal Information.** Company represents to Provider that it has the legal right to receive and collect, and as may be the case, export to Apex all of the personal (identifiable and non-identifiable), financial and other information of various individuals and other legal entities that will form the subject matter of any Software Application database(s). Except as specifically authorized by the Company in

writing or as ordered by a Court of tribunal of competent jurisdiction, or as is necessary for Apex to perform its services under this Master Terms & Conditions and all resulting SOWs, Apex will not disclose any Company Database to any third party or make any other use of any databases except for purposes related to the performance of its Services or delivery of its Deliverables or on specific written instructions from Company.

- 9.2 **Data Privacy and Collection.** If Company plans to make use of any personal information of individuals as that concept is defined in relevant data protection and privacy legislations beyond that which is implied by the simple use of the Software Application by Users in relation to the relevant Event, then Company agrees to inform Apex in writing prior to the collection of this personal information so the purposes for which the information will be used can be clearly set out as part of the data collection interface of the Application Website, such that (amongst other protection and privacy protocols which may be instituted from time to time) Users are given an opportunity at the time of submission of personal information to “consent” to such subsequent use of their personal and other information (in accordance with any applicable data protection and privacy legislation). See also ARTICLE 18 below for provisions with respect to data protection and privacy.
- 9.3 **Apex’s Obligations.** In relation to any Company Data which Apex processes on behalf of Company pursuant to this Master Terms & Conditions, Apex shall:
- (a) act in accordance with the instructions of the Company;
 - (b) take appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - (c) provide Company with such information and assistance as Company may reasonably require in order to meet its obligations under the applicable data and privacy legislation including, but not limited to, complying with requests from data subjects for access to, information about, and rectification of, their personal data.

ARTICLE 10 – LICENSE GRANTS

- 10.1 **Software Applications (including the Application Websites).** Apex shall grant to Company licences for the Software Applications in accordance with -and subject to the terms and conditions of- the Licensing SOW (attached as Schedule A to these Master Terms & Conditions).
- 10.2 **Company Content.** For the purposes of these Master Terms & Conditions or to carry out services under a SOW, Company grants to Apex a non-exclusive, non-sublicensable, royalty-free, indefinite, world-wide license to use, reproduce, distribute, and publicly display or digitally provide, as part of a Software Application accessible through an Application Website, the Company Content, subject to the terms of these Master Terms & Conditions and any relevant SOW. Company will also obtain similar authorization for any third party Content that forms a part of any Software Application and provide such written authorization to Apex upon its request.
- 10.3 **Company Data.** See ARTICLE 9 above.

ARTICLE 11 – TRADEMARKS

- 11.1 **Limited Use of Marks.** Subject to the terms and conditions of this Master Terms & Conditions, each Party authorizes the other Party to use the other Party's trademarks, service marks, trade names, logos or other commercial or product designations, whether registered or not, (collectively, "**Marks**") for the purposes of providing Services and Deliverables to Company (including but not limited to the creation, marketing and setting up of the Application Website and the Software Application with appropriate links), generally in the performance of the Parties' respective obligations under this Master Terms & Conditions and any resulting SOWs, and for the purposes of displaying and/or listing the clientele of Apex or Company respectively. The trademark owner may revoke this authorization at any time in its sole discretion, but not without adequate cause or justification, and not if the revocation would prevent Apex from performing its Services. Title to and ownership of the owner's Marks shall at all times remain with the owner. Each party will use the other party's Marks exactly in the form provided and in conformance with any trademark usage policies. Each party will not form any combination marks with the other party's Marks without the other Party's written consent. Each party will not take any action inconsistent with the owner's ownership of the Marks and any benefits accruing from the use of such of any Marks will automatically vest in the owner of the Marks.

ARTICLE 12 – INDEPENDENT CONTRACTOR

- 12.1 **Independent Contractors.** In the performance of this Master Terms & Conditions and any SOW, it is mutually understood and agreed that Apex is at all times acting and performing as an independent contractor with, and not as an employee, joint venture, partner, agent, principal or lessee of the Company, and nothing in this Master Terms & Conditions nor any resulting SOWs shall be construed to create an employer-employee, agent-principal, joint venture or partnership relationship between Apex and Company. Apex shall have no authority to act on behalf of or to enter into any contract, or incur any liability for or make any representations on behalf of the Company.

ARTICLE 13 – INSURANCE

- 13.1 **Apex's Coverage.** Apex will obtain and maintain the following insurance coverage for the duration of the Term:
- (a) workers' compensation insurance in accordance with the applicable laws of the provinces or other locales where Apex performs Services hereunder;
 - (b) employer's liability insurance in an amount not less than CAD \$100,000 per occurrence;
 - (c) commercial general liability or broad form comprehensive general liability insurance with a combined bodily injury and property damage single limit of not less than CAD \$500,000 per occurrence and CAD \$1,000,000 in the aggregate which includes premises, contractual liability, products liability, independent contractor and broad form property damage;
 - (d) comprehensive automobile liability insurance with a combined bodily injury and property damage single limit of CAD \$500,000 per occurrence; and

- (e) professional (errors and omissions) liability insurance covering Apex's legal liability for damages arising out of Apex's performance of the Services with a minimum insurance coverage amount of CAD \$100,000 per occurrence and CDN \$500,000 in the aggregate.

13.2 Upon request by Company, Apex shall include Company in any such policy described above as an additional Insured, provided that where any additional fees for such inclusion are incurred by Apex, Company shall reimburse Apex for said additional fees upon Apex providing reasonable evidence of such. Upon written request by Company, Apex shall provide to Company certificates of insurance evidencing the required coverage. Apex shall provide Company with thirty (30) days notice prior to cancellation of any coverage described in this Section 13.1.

ARTICLE 14 – INDEMNITIES

- 14.1 **Indemnity by Apex.** Apex agrees to indemnify and to hold Company and its directors, officers, employees, agents and assigns harmless for any claims, liability or expense resulting from its gross negligence (including that of its employees, directors, subcontractors, agents, and affiliates, its clients and customers and their agents and employees), or on account of damage to property and injuries, including death. Company will give Apex prompt written notice of any such claim of which Company has knowledge and Apex agrees to defend or settle at its sole expense all suits or proceedings arising out of the previous sentence but Company shall be entitled to defend with its own counsel at its own expense and will have the right to participate in the defence of any suit or proceeding through counsel of its own choosing, at Company's expense and Apex shall not settle any such suits without Company's express prior written approval, which approval shall not be unreasonably withheld.
- 14.2 **Indemnity by Company.** Company agrees to indemnify and to hold Apex and its directors, officers, employees, agents and assigns harmless for any claims, liability or expense resulting from its gross negligence (including that of its employees, directors, subcontractors, agents, and affiliates, its clients and customers and their agents and employees), or on account of damage to property and injuries, including death. Apex will give Company prompt written notice of any such claim of which Apex has knowledge and Company agrees to defend or settle at its sole expense all suits or proceedings arising out of the previous sentence but Apex shall be entitled to defend with its own counsel at its own expense and will have the right to participate in the defence of any suit or proceeding through counsel of its own choosing, at Apex's expense and Company shall not settle any such suits without Apex's express prior written approval, which approval shall not be unreasonably withheld.

ARTICLE 15 – DISCLAIMER OF WARRANTIES

- 15.1 The warranties and conditions set out here are in lieu of all other warranties, conditions and other terms expressed or implied all of which are specifically excluded including, without limitation, those of satisfactory quality, fitness for a particular purpose, etc. Except as otherwise set out in these Master Terms & Conditions, Apex shall provide the Services on an "As Is" basis.
- 15.2 Apex does not and cannot represent or guarantee the truthfulness, accuracy or reliability of information provided by Company and authorized Users through the Services and any Software Application. Accordingly, Company acknowledges and agrees that any reliance Company places on the Company Data generated by the Services and Software Applications and displayed for Company and provided to Company in digital or other formats is AT COMPANY'S OWN RISK AND LIABILITY without exception.

ARTICLE 16 – LIMITATION OF LIABILITY

- 16.1 **GENERAL LIMITATION OF LIABILITY.** SUBJECT TO ARTICLE 15, UNDER NO CIRCUMSTANCE WILL APEX BE LIABLE TO COMPANY FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES OR LOSS OF REPUTATION (EVEN IF COMPANY HAS ADVISED PROVIDER OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM A BREACH OF THESE MASTER TERMS & CONDITIONS AND/OR A SOW, THE OPERATION OR NON-OPERATION OF ANY SERVICES, SOFTWARE APPLICATION, ANY DELIVERABLES, OR ARISING FROM ANY OTHER PROVISION OF THESE MASTER TERMS & CONDITIONS OR SOW, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOSS OF BUSINESS. APEX'S LIABILITY UNDER THESE MASTER TERMS & CONDITIONS (AND ANY CORRESPONDING SOW) FOR DAMAGES, COSTS AND EXPENSES, REGARDLESS OF THE CAUSE OR THEORY OF LEGAL LIABILITY, SHALL NOT EXCEED THE LESSER OF TEN THOUSAND DOLLARS (\$10,000) AND THE TOTAL CONSIDERATION ACTUALLY PAID UNDER THE RELEVANT SOW OR RELATED SOWS DURING THE TWELVE MONTHS IMMEDIATELY PROCEEDING THE DATE OF THE CLAIM.
- 16.2 **APPLICABILITY TO DIRECTORS AND OFFICERS.** TO THE FULL EXTENT ALLOWABLE BY LAW, IT IS EXPRESSLY AGREED AND ACKNOWLEDGED THAT THE LIMITATION OF LIABILITY IMPOSED BY SECTION 16.1 ABOVE APPLIES TO AND INCLUDES ANY ERROR, MISSTATEMENT, ACT, OMISSION, NEGLIGENCE, OR BREACH OF DUTY COMMITTED, ATTEMPTED, OR ALLEGEDLY COMMITTED OR ATTEMPTED, BY A DIRECTOR OR OFFICER OF APEX, INDIVIDUALLY OR OTHERWISE, IN THEIR CAPACITY AS DIRECTOR OR OFFICER OF APEX.
- 16.3 **ATTENTION:** THE AMOUNT OF THE FEES FOR THE SERVICES TO BE DELIVERED BY APEX PURSUANT TO THESE MASTER TERMS & CONDITIONS UNDER A RELEVANT SOW REFLECT THE INCLUSION OF THE EXCLUSION OF WARRANTIES (ARTICLE 15) AND THIS EXPRESS LIMITATION OF LIABILITY SECTION (THIS ARTICLE 16). SHOULD COMPANY DESIRE A GREATER LEVEL OF RISK PROTECTION FROM APEX, THE AMOUNT OF FEES PAYABLE FOR APEX'S SERVICES WILL BE INCREASED BY AN AMOUNT TO BE DETERMINED IN APEX'S SOLE JUDGMENT AND DISCRETION. ANY SUCH GREATER LEVEL OF LIABILITY PROVIDED SHALL BE ADJUSTED WITHIN THE PARTICULAR SOW TO WHICH THE INCREASE APPLIES.
- 16.4 **INTERNET CONNECTIVITY.** APEX CANNOT BE RESPONSIBLE FOR THE QUALITY OF COMPANY'S OR AUTHORIZED USERS' INTERNET CONNECTIVITY (THE QUALITY OF WHICH VARIES CONSIDERABLY AROUND THE WORLD AND BY INTERNET SERVICE PROVIDER) OR HARDWARE OR ANY AUTHORIZED PARTIES USING THE SOFTWARE APPLICATIONS. IN THE EVENT OF IMPROPER TRANSMISSION OR LOSS OF DATA IN TRANSMISSION THROUGH NO FAULT OF APEX, APEX WILL USE ITS BEST EFFORTS TO RECREATE ANY TRANSMISSIONS OF WHICH IT IS AWARE, BUT EXPRESSLY ASSUMES NO LIABILITY FOR SUCH ANY SUCH RESULTING LOSS.

ARTICLE 17 – DISPUTE RESOLUTION

- 17.1 **Governing Law.** This Master Terms & Conditions is made and shall be governed by and interpreted in accordance with the laws of the Province of Ontario. The parties acknowledge that these Master Terms & Conditions evidences a transaction involving interprovincial commerce. The *Ontario Arbitration Act* shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause(s) in these Master Terms & Conditions.
- 17.2 **Negotiation First.** In the event of any dispute, claim, question, or disagreement arising from or relating to these Master Terms & Conditions (or a resulting SOW) or the breach thereof, the parties

hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the Rules of the ADR Institute of Canada, Inc. in accordance with the provisions of its commercial arbitration rules.

All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for purposes of federal, state and provincial rules of evidence. If the Parties unanimously agree, or if a Party gives notice to arbitrate under the prior sentence, the Parties shall engage in arbitration to resolve the dispute.

- 17.3 **Disputes and Arbitration.** Disputes, excluding (i) the right of either party to apply to a court of competent jurisdiction for an interim or interlocutory injunction or other provisional remedy to preserve the status quo or prevent irreparable harm pending final award of an arbitrator; or (ii) with respect to any disputes that may arise in connection with the ownership of any intellectual property; or (iii) with respect to any disputes that may arise in connection with a breach of a party's obligations of confidentiality hereunder, shall be finally settled by arbitration administered by the Rules of the ADR Institute of Canada, Inc. in accordance with the provisions of its commercial arbitration rules.
- 17.4 **Arbitration Process.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the *Ontario Arbitration Association* in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 17.5 **Choice of Arbitrator & Location.** The arbitrator selected by the claimant and the arbitrator selected by respondent shall, within ten days of their appointment, select a third neutral arbitrator. In the event that they are unable to do so, the parties or their attorneys may request the ADR Institute of Canada, Inc. to appoint *the third neutral arbitrator. Prior to the commencement of hearings*, each of the arbitrators appointed shall provide an oath or undertaking of impartiality. Any arbitration shall be conducted in location to be determined by mutual agreement between the parties; where the parties cannot agree, it shall take place in Toronto, Ontario.
- 17.6 **Arbitration is Binding.** The written decision of the arbitrator shall be final and binding upon the parties in respect of all matters relating to the arbitration, the procedure, the conduct of the parties during the proceedings and the final determination of the issues in the arbitration. There shall be no appeal from the determination of the arbitrator.
- 17.7 **Arbitration Award.** In no event shall an award in an arbitration initiated under this ARTICLE 17 exceed an amount contemplated by ARTICLE 16 above.
- 17.8 **Arbitration Fees.** The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.
- 17.9 **Dispute re Technical Issues.** If any dispute concerning technical oriented issues arises, the Parties may jointly decide to seek and share the costs of a neutral third party professional to prepare an assessment of the issue(s) in question to assist them in working through and finding a satisfactory resolution to the dispute.
- 17.10 **Continuation of Service.** Apex shall continue to provide the Services and work on any Deliverables set out in this Master Terms & Conditions or a SOW even during negotiations and further dispute resolution proceedings conducted under this Section and even during any professional assessments

being conducted by neutral third parties provided that if the dispute is in relation to any Fees or Expenses arising from this Master Terms & Conditions (as amended) or any SOW:

- (a) Company agrees to pay the disputed amounts into an interest bearing trust account of a mutually acceptable individual or institution to be paid out on consent of the Parties or in accordance with any arbitral award;
- (b) Company continues to make all other payments directly to Apex as they fall due pursuant to this Master Terms & Conditions and continues all payments with respect to any agreement or SOW between the Parties; and
- (c) in the opinion of Apex, the Company has made sufficient payments of the relevant Fees and Expenses that Apex has the necessary working capital to continue work on the relevant SOW during the dispute resolution proceedings.

ARTICLE 18 – COMPLIANCE WITH LAWS AND REGULATORY ISSUES

- 18.1 **Inter-jurisdictional Regulatory Compliance.** Apex and Company acknowledge that there are a myriad of regulatory issues that need to be addressed in connection with the Parties' respective obligations under this Master Terms & Conditions and future SOWs and that such issues will arise not only in connection with Canada, but possibly other jurisdictions given the worldwide nature of the Internet. The Parties acknowledge that, while it may be impossible to ensure regulatory compliance in every relevant jurisdiction in the world, the Parties will take all necessary steps to ensure compliance with the Regulatory Laws (see definition in next Section) of Canada, the US, the European Union, and will take steps to comply with the most stringent regulatory jurisdictions in the world in the expectation that this will provide compliance in most of the other world jurisdictions.
- 18.2 **Cooperation between Parties.** Without limitation of any of the Parties' obligations hereunder, the Parties shall work together and share information to ensure that in the performances of their respective obligations under this Master Terms & Conditions and any corresponding SOW, and specifically in the collection and processing of any personal data by Apex for the Company, the setting up and hosting of the Application Website(s) and Software Application(s), and generally in the provision of all Services, that they will comply with any relevant regulatory legislation in the following areas (and any other areas that the Parties may identify during the Term of this Master Terms & Conditions or depending on the functionality of future Support Applications, under any relevant SOW): (i) **Data Protection and Privacy.** The European Union Data Directive on the protection of individuals with regard to the processing of any personal data and on the free movement of such data, the **Canadian Personal Information Protection and Electronics Document Act** ("PIPEDA"), the U.S. **Children's Online Privacy Protection Act** ("COPPA"), the **UK Data Protection Act** and other privacy and data protection legislation from other relevant jurisdictions; and (ii) Website Content Laws. All relevant civil and criminal laws in respect of the Company Content, Apex Content and User Content on the Website(s); and (iii) Website Access Legislation. Any Human Rights Legislation dealing with the provision of specially designed and feature enhanced websites for the disabled; and (iv) Such other laws as the Parties may in future identify as being relevant to the delivery of the Services. All of the foregoing legislation shall collectively be referred to as the "**Regulatory Laws.**"
- 18.3 **Responsibilities and Future Steps to Compliance.** Apex and Company are each responsible for complying with any obligations applying respectively to them under the applicable Regulatory Laws. The Parties acknowledge and agree to work together following the issuing of an SOW, to immediately

analyze the issues arising from the Regulatory Laws with respect to the to-be-developed Software Applications and Application Website or Deliverables and adopt mutually compatible regulatory compliance programs through the establishment of complimentary compliance policies and procedures. The Parties acknowledge that such Regulatory Laws need to be examined at a very early stage in the development process for the Apex Services, as some of the issues arising from compliance with the Regulatory Laws may impact on and determine some of the Scope Statement of the Software Applications and design features of the Application Websites.

ARTICLE 19 – APEX’S WARRANTIES AND REPRESENTATIONS

- 19.1 **Services Warranties.** Apex warrants that the provision of its Services including any Deliverable, Apex Content and any Apex Tools provided pursuant to a SOW will:
- (a) not knowingly infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy enforceable in Canada, the United States of America or the European Union;
 - (b) not knowingly violate any applicable law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising);
 - (c) not be defamatory, trade libellous, unlawfully threatening or unlawfully harassing;
 - (d) not be obscene, contain child pornography or be harmful to minors;
 - (e) not contain any viruses, Trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information;
 - (f) will be performed in a workmanlike manner and according to the highest professional, technical and artistic standards of the industry;
 - (g) will be designed and will operate in accordance with the Scope Statement.
- 19.2 **Conformity to SOW.** Apex warrants that its Software Applications and Application Websites will materially conform to any Scope Statement, and be substantially free from reproducible material errors, following acceptance by Company and when Hosted during the Term set out in the relevant SOW.
- 19.3 **No Restrictions.** Apex warrants that there is no outstanding contract, commitment or agreement to which it is a party or legal impediment of any kind known to it which conflicts with this Master Terms & Conditions or might limit, restrict or impair the rights granted to Company. Apex warrants that it has the right, power and authority to enter into and perform this Master Terms & Conditions.

ARTICLE 20 – COMPANY WARRANTIES AND REPRESENTATIONS

- 20.1 **Company Warranties.** During the period that Apex provides the Services, Company will not distribute on the Application Website or permit to be stored in any of the Software Applications, or permit any User or Company Content that:
- (a) infringes on the Intellectual Property Rights of any third party or any rights of publicity or privacy;
 - (b) knowingly violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, antidiscrimination or false advertising);
 - (c) is defamatory, trade libellous, unlawfully threatening or unlawfully harassing;
 - (d) is obscene, contains child pornography; or
 - (e) contains any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- 20.2 **Additional Warranties.** Company warrants that there is no outstanding contract, commitment or agreement to which Company is a party or legal impediment of any kind known to Company which conflicts with this Master Terms & Conditions. Company warrants that it has the right, power and authority to enter into and perform this Master Terms & Conditions.
- 20.3 **Anti-SPAM Provisions.** Company and any authorized Users will not use any Software Applications (if email broadcast functionality or Company or User e-mail addresses are included as part of a Software Application or Application Website) to:
- (a) transmit SPAM (i.e., unsolicited "junk" e-mail sent to large numbers of people or businesses to promote products or services), bulk or unsolicited commercial communications, except in accordance with all relevant laws (including but not limited to Canada, the United States and the European Union; - in Canada *PIPEDA* and in the United States, the *Can Spam Act of 2003* – in the European Union, *The European Directive on Privacy and Electronic Communications* and other EU directives and national laws respecting privacy, data protection and SPAM);
 - (b) pretend to be or assume anyone else's identity other than the Company or its affiliates; or
 - (c) misrepresent the Company's affiliation as that of another person or legal entity.

The Company agrees to indemnify and save harmless Apex in respect of any damages including reasonable attorney fees arising from Company's breach of this section.

ARTICLE 21 – NON-INTERFERENCE WITH EMPLOYEES

- 21.1 **Non-Interference.** During the term of this Master Terms & Conditions and for a period of one year following its completion or termination, neither Company, nor any of its respective directors, officers and employees or volunteers shall, in any form or manner, or through any affiliated or related corporation or other related legal entity affiliated with the Company shall:

- (a) induce, or attempt to induce, any Apex Solutions Consulting Inc. employee to quit Apex's employ;
- (b) recruit or hire away any Apex employee; or
- (c) hire or engage any Apex employee or former employee whose employment with Apex ended less than one year before the date of such hiring or engagement,

unless permission is granted in writing by the Apex or such employees bona fide respond to a published job advert. The parties expressly agree that the foregoing restrictions shall not apply to subcontractors or independent contractors hired by Apex at the direction or suggestion of Company.

ARTICLE 22 - PUBLICITY

- 22.1 **Use for Publicity.** Subject to Company's prior approval, with such approval not to be unreasonably withheld, and subject further to the provisions of these Master Terms & Conditions (and in particular ARTICLE 11) Apex may use Company name, domain names of Company home Websites and the associated URLs, examples of the actual services provided (maintaining Confidential Information confidential at all times) to publicize or otherwise market, (through the Apex home Website or associated sites, press releases, advertisements, promotions, other commercial documents, or any other communications) the existence of this Master Terms & Conditions (and any SOW) and its terms (save those as to Fees and Expenses and payment terms) and the resulting relationship between Company and Apex and the Services and Deliverables it is providing to Company for a specific Event.
- 22.2 **Mutual Use.** The Parties' respective uses of the other's trade names, trademarks, logos, etc. for publicity purposes as set out in this Section is subject to the general provision of Section 12 respecting the use of each other's trade names and trademarks.
- 22.3 **Software Application Branding.** For each Software Application and Application Website developed and hosted by Apex for Company, Apex shall have in accordance with these Master Terms & Conditions the right to prominently display on the website home page a "Powered by Apex" or similar logo, of such size as the Company may decide in consultation with Apex, but not less than 30 x 100 pixels. Clicking on the "Powered by Apex™" logo will open a small separate window without browser controls that includes a brief explanation of Apex, a legal disclaimer and a link to Apex's web site.

ARTICLE 23 - FORCE MAJEURE

- 23.1 Save and except any payment obligations, neither Party shall be liable or considered in default when the delay of performance of their respective obligations under this Master Terms & Conditions or a SOW is caused by circumstances beyond its reasonable control and occurring without its fault or negligence, including failure of the Internet (either inoperable or reduced ability to operate), acts of civil or military authorities, national emergencies, fire, flood, acts of God, insurrection, acts of terrorism and war, provided the Party invoking this paragraph immediately provides notice to the other and does everything reasonably possible to resume its performance under the terms of this Master Terms & Conditions and any SOW.

ARTICLE 24 – GENERAL PROVISIONS

- 24.1 **Entire Agreement.** This Master Terms & Conditions sets forth the entire understanding of the Parties with respect to the subject matter and supersedes all prior and contemporaneous agreements and understandings between them.
- 24.2 **No Waiver or Modification.** No waiver or modification of any provision of these Master Terms & Conditions may be made unless by a written instrument duly executed by each Party. Any waiver or breach of any term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term or condition. The failure of any Party to insist upon strict performance of any term or condition shall not constitute a waiver of such Party's right to demand strict compliance in the future.
- 24.3 **Notices.** All notices and other communications required or permitted under this Master Services Agreement shall be in writing, served personally on, delivered by recognized overnight courier or mailed by certified or registered mail, the party to be charged with receipt at the address specified below. Notices and other communications served by mail shall be deemed given forty-eight (48) hours after deposit of such notice or communication as certified or registered mail with postage prepaid and duly addressed to whom such notice or communication is to be given. All other notices shall be deemed given upon actual receipt:

If to COMPANY:

See Company contact information as detailed in the relevant SOW.

If to APEX:

Apex Systems Consulting Inc.
460 Brant Street, 3rd Floor
Burlington, ON L7R 4B6

Phone: (647) 288-7477
Fax: (647) 288-7478
Email: kyle@apex1.ca
Attention: Mr. Kyle Booth

Any party may change its respective address for purposes of this Section by giving to the other Party in the manner provided, a written notice of the change.

- 24.4 **Severability.** All Sections, clauses thereof and covenants contained in this Master Terms & Conditions are severable, and in the event any of them shall be held to be invalid by any court, this Master Terms & Conditions shall be interpreted as if such invalid Sections, clauses or covenants were not part of the Master Terms & Conditions.
- 24.5 **Assignment.** Neither Party may assign or transfer this Master Terms & Conditions nor any SOW either in whole or in part without the consent of the other party (which may be withheld in its absolute discretion) and Company may not sub-license any of the rights granted to Company under this Master Terms & Conditions or any subsequent SOW without the prior written consent of the Apex. This Master Services Agreement may be assigned, however, by Company to an entity which is acquiring substantially all of the assets of the Company so long as the entity agrees in writing prior to

the assignment to comply with all obligations of Company under this Master Terms & Conditions and any subsequent SOWs.

- 24.6 **Exhibits, Schedules, etc.** Each Exhibit, Schedule or Appendix attached to this Master Terms & Conditions or a SOW is made part of this Master Terms & Conditions or SOW respectively, and the terms of these Exhibits, Schedules and Appendices will be fully binding on the Parties.
- 24.7 **Interpretation.** In the event of a conflict between or among any of the terms of this Master Terms & Conditions and the SOW(s) or any other document incorporated by reference, the following shall prevail in the order set out; (a) This Master Terms & Conditions and any incorporated documents (which include all Schedules), and (b) The SOW and any incorporated documents including Change Orders.
- 24.8 **Further Assurances.** The Parties agree to from time to time to negotiate, execute and deliver any other documents, deeds, instruments, or assurances as may be necessary or required to carry into force and effect the purposes and intent of this Master Terms & Conditions or any subsequent agreement, SOW or **Change Order** between the Parties.
- 24.9 **Applicable Law.** This Master Terms & Conditions is made and shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to principles of conflicts of law. However, if Apex is seeking to protect its Intellectual Property Rights or employees in the USA, these Master Terms & Conditions shall be interpreted in accordance with the laws of the USA.
- 24.10 **No Rights to Set Off.** The Company agrees that Company has no right of set-off, at law or in equity with respect to payments under any SOW.
- 24.11 **Counterparts and Fax.** This Master Terms & Conditions and any SOW may be executed in one or more counterparts and by each Party sending faxed copies to the other Party's facsimile machine, each of which shall be deemed an original, but all of which together shall constitute one and the same Master Terms & Conditions. For evidentiary purposes and so that each Party maintains accurate records, the Parties agree to send by mail or courier an original executed copy of this Master Terms & Conditions as soon as possible after the fax transmission.
- 24.12 **UN Sales Convention.** The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Master Terms & Conditions or any resulting Statement(s) of Work or Change Order(s).