

APEX SOFTWARE TECHNOLOGIES, LLC
TERMS OF SERVICE – HOSTED SOFTWARE SERVICES

Effective: November 2021

These Terms of Service (“Terms”), together with any Order for the Hosted Services, contain the service terms that apply to any and all hosted software and related services (collectively, “Hosted Services”) provided by Apex Software Technologies, LLC (“Apex”) to the customer identified in such Order (“Customer”), including, without limitation, the Employer OnDemand, Employer on the Go, My Employer on the Go, and Trilogy Timekeeping Services. Such terms are in addition to, and not in lieu of, the Master Services Agreement (including the General Terms referenced therein) in effect between Apex and Customer (“MSA”). Capitalized terms used and not otherwise defined herein have the same meanings given for those terms in the MSA.

1. Provision of Hosted Services; License.

a. Subject to the terms and conditions of this Agreement (including, without limitation, the restrictions set forth in Section 1(b) of these Terms of Service), by execution or acceptance of an Order for the Hosted Services, Apex:

(i) Agrees to provide Customer (and, if applicable, Customer’s Authorized Employers) the specific Hosted Services set forth on such Order during the Services Term of such Order, which Hosted Services include, at a minimum, access, via the Internet, to Apex’s proprietary hosted payroll management software application described in the Order (the “System”). The Hosted Services may also include one or more of the following (each as more specifically described on the applicable Order(s)): (u) implementation services with respect to the System as described in that Order in order to integrate the System with Customer’s computing environment; (w) training services for Customer, its Authorized Employers and End Users with respect to their use of the System; (x) access, via the System, to Third Party Services subscribed to by the Customer (or its Client, as applicable), in accordance with the terms of this Agreement; (y) data storage services; and (z) one or more End User Apps¹.

(ii) Grants to Customer, during the Services Term of such Order, a limited, nontransferable, nonexclusive license for Customer’s End Users with appropriate access authority (as assigned by Customer) (x) to access over the Internet and use the Hosted Services set forth in the Order(s) solely for Customer’s own account and as a service bureau on behalf of Customer’s Clients; (y) if applicable to the Hosted Services purchased, install, access and use the applicable End User App(s) on such End User’s mobile device solely for the purpose of accessing and using the Hosted Services in accordance with the terms of this Agreement; and (z) to use the Documentation² as reasonably necessary for Customer’s internal use related to the licenses granted under this Section 1(a).

(iii) With respect to each Authorized Employer, grants to Customer, during the Services Term of the Order applicable to such Authorized Employer, the right to grant to such Authorized Employer and its End Users a sublicense to access and use the Hosted Services (and any related End User App(s) and Documentation, if any) described in such Order (which sublicenses are equal in scope to the licenses granted in Section 1(a)(ii)) pursuant to the Employer Agreement.

(iv) With respect to each Client who is not an Authorized Employer, grants to Customer, during the Services Term of the Order applicable to such Client, the right to grant to such Client and its End Users a sublicense to use any End User Apps related to the Hosted Services used by Customer with respect to such Client (which sublicense is equal in scope to the license granted in Section 1(a)(ii)(y)).

¹ “End User App” means a stand-alone software application provided or made available to Customer and its Clients and Authorized Employers in connection with its subscription to the Hosted Services for installation on mobile devices to transmit or upload Customer Data from such devices to the Hosted Services.

² “Documentation” means the user documentation and any other operating, training and reference manuals (including, without limitation, any modifications or derivative works thereof) supplied to Customer relating to the use of the Software made available to Customer under these Terms of Service.

b. Customer and its End Users will not, directly or indirectly, (i) license, sell, redistribute, lease or otherwise transfer or assign any of the Hosted Services or an End User App, (ii) alter or permit a third party to alter any part of the Hosted Services or an End User App; (iii) permit any third party other than an End User with appropriate access authority, to access or the use the Hosted Services or any End User App; (iv) disassemble, decompile, reverse engineer or otherwise attempt to derive source code or other trade secrets from the Hosted Services or any End User App; (v) access or use the Hosted Services or any End User App on equipment that does not possess the System Requirements; or (vi) use the Hosted Services or any End User App for any unlawful purpose. Customer will ensure that the End Users adhere to the terms of this Agreement, including without limitation the terms of Sections 1 of these Terms of Service and Section 7 of the MSA, and will be liable for its' End Users' breach of the Agreement.

c. Customer agrees and acknowledges that, during the term of this Agreement, Apex shall be Customer's exclusive provider for payroll processing software or software services, and Customer shall not use or subscribe to any software or software services that are similar to or compete with the System; provided, however, that Customer shall have a period of 180 days from the effective date of its initial Order for the Hosted Services to migrate its Clients to the System. For absence of confusion, the foregoing restriction does not apply to Third Party Services that may be available via the Hosted Services. For the absence of confusion, Customer's failure to comply with the terms of this Section 1(c) will constitute a material breach of this Agreement.

d. Apex may suspend the Hosted Services in whole or in part and without notice: (i) if Apex believes Customer's or its End Users' use of the Hosted Services represents a direct or indirect threat to the function or integrity of the Hosted Services, Apex's or its service providers' system or networks, or any third party's use of the Services; (ii) if reasonably necessary to prevent unauthorized access to client data (including, without limitation, the Customer Data); or (iii) to the extent necessary to comply with legal requirements. If Apex suspends the Hosted Services without notice, Apex will provide the reason for such suspension, upon Customer's request. Any suspension of services for the foregoing reasons will apply to the minimum necessary portion of the online portion of the Hosted Services and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension. Apex may also, upon such notice as is reasonably practicable under the circumstances, perform scheduled or emergency maintenance (including temporary suspension of the Hosted Services as necessary) to maintain or modify the System or Apex Technology.

2. Ancillary Services.

a. Apex will use commercially reasonable efforts to complete all implementation and training services related to the Hosted Services that are ordered by Customer consistent with an implementation schedule to be agreed to by Customer and Apex. Customer acknowledges that the Hosted Services or End User App may not be available for use (in whole or in part) by Customer or its Authorized Employers or End Users until such implementation has been completed. All training will be provided from Apex's facilities or via web conference, unless otherwise agreed to by the parties in writing. Customer will be responsible for its own expenses with respect to attending any training provided by Apex.

b. As part of the implementation services, Apex will provide Customer with assistance in migrating existing and historical data identified and selected by Customer from Customer's existing payroll software platform to the Services, which assistance may be provided via automated tools or by manual entry. Unless otherwise set forth on the applicable Order, such data migration services will be provided for no more than five (5) Clients. Customer is responsible for providing or making available to Apex all Data to be migrated to the Services. Without limiting the generality of the disclaimers in the MSA, it is the responsibility of Customer, its Clients and End Users to review, audit and confirm Data as uploaded, input or otherwise maintained in the Application Services to ensure that all such Data is accurate. Customer, on its own behalf and on behalf of its Clients and End Users, agrees to hold Apex harmless for any and all claims, premium payments, payroll errors or other damages resulting from inaccurate Data.

c. Apex will provide Customer with technical assistance by email or other Internet-based communication with respect to the access and use of the Hosted Services and the identification and reporting of problems or errors with the System. Apex will respond to Customer within a reasonable period of time from a request placed by Customer during Apex's normal operating hours, 9 a.m. to 5 p.m., Eastern Standard/Daylight Time, Monday through Friday, holidays excepted; such hours are subject to change without notice. On the same terms, Apex will provide "2nd Tier" support with respect to Customer's Authorized Employers. In this regard, Customer will be responsible for routine troubleshooting and intake of all

issues and questions of Authorized Employers and their End Users related to the System. Customer will then make commercially reasonable efforts to address and to correct such issues or problems of its Authorized Employers or their End Users. If, after making such reasonable efforts, Customer cannot correct an error or problem related solely to the System, Customer will notify Apex, and Apex will assist Customer (not the Authorized Employer or its Employer Users) in diagnosing and correcting such error or problem. In no event will Apex be required to provide support or maintenance services directly to any Authorized Employer or its End User of the System in accordance with the above terms. Apex may also provide support and technical assistance or reference guides to End Users online, via the System or at such other locations as Apex may elect, in its sole discretion.

d. Apex will not be responsible under Section 2(c) for (i) correcting errors resulting from misuse, negligence, revision, modification, or improper use by Customer, an Authorized Employer, End User or any other person or entity of the Hosted Services or any portion thereof; (ii) errors resulting from any software, hardware or equipment other than the System; (iii) with respect to errors in the End User App, failure by Customer to install error corrections provided to Customer by Apex from time to time; or (iv) any errors resulting from Customer's failure to comply with the System Requirements or other written specifications set forth in any applicable Documentation (all of the foregoing, the "Excluded Issues").

e. All implementation, training and support services may be subject to usage limits as set forth in the applicable Order. In the event Apex provide any such ancillary Services to Customer or its Authorized Employers in excess of such usage limits (or in the event that Apex elects, in its sole discretion, to provide any support services with respect to Excluded Issues), Customer will pay the corresponding usage Fees set forth in such Order for such additional Services.

3. Third Party Services.

a. With respect to any Third-Party Services available to or used by Customer in connection with the Apex Services, and in addition to the terms of Section 10(c) of the General Terms, Customer acknowledges and agrees that (i) access and use of the Third Party Services may be subject to Customer or its applicable Clients' subscription to or purchase of a separate license from (or agreement or acceptance of separate terms of use or similar terms with) the Third Party Provider; (ii) Customer will review and comply with all such terms and conditions, and will not use the Third Party Services in any manner that would infringe or violate the rights of Apex or any other party or in furtherance of criminal, fraudulent or other unlawful activity; (iii) the Third Party Provider, and not Apex, is responsible for its own actions and inactions; (iv) Apex's provision of integrated access with such Third Party Services via the System may be revoked by the Third Party Provider or Apex at any time and without notice or any liability to Customer, its Clients or its End Users; (v) Apex may transmit to the applicable Third Party Provider such Customer Data residing in the System with respect to any Client and its End Users subscribing to or otherwise utilizing (or with respect to whom Customer utilizes) such Third Party Services as is reasonably necessary for the Third Party Provider to perform and provide the Third Party Services. Without limiting the generality of the terms of Section 5(a)(ii) of the General Terms, Customer represents and warrants that Customer has either provided the owner of any such Customer Data notice or received permission from the owner of such Customer Data, as required by applicable law, for Apex to: (i) use or disclose the Customer Data in accordance with Apex's Privacy and Security Statement, (ii) provide the data to Third Party Services that Customer approves, in accordance with the terms of this Agreement, and (iii) otherwise use and disclose the Customer Data in accordance with this Agreement.

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

c. Customer will indemnify, defend, and hold Apex harmless from and against any and all Losses resulting from any Action brought by any third party (including, without limitation, any Third Party Provider, any Client or End User)

against Apex arising out of or relating to (i) Customer's activities or relationship with the Third Party Provider; or (ii) Customer's or any Client's use or misuse of any Third Party Services.

d. Customer's or its Clients' use and access of certain Third Party Services may entitle Customer to receive certain royalties, revenue share or other similar compensation to be paid by Apex to Customer. Any such amounts payable to Customer will be set forth on the applicable Order (which may consist of the "opt-out" or "opt-in" notification described in Section 10(c) of the General Terms) and paid as described on such Order.

4. Configuration of Services.

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

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

5. Customer Requirements.

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

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

c. From time to time, Customer may provide Apex with feedback, both positive and negative, regarding Customer's and its End User's use of the Hosted Services, including, without limitation, details regarding ease of use, functionality, errors or problems accessing or using the Hosted Services, possible enhancements or modifications to the Hosted Services and other similar information (collectively, the "Feedback"). All of such Feedback will be owned by Apex and be deemed to be the Confidential Information of Apex.

6. Calculation of Fees. Fees for the Hosted Services are determined on per-unit basis, and Customer's and its Authorized Employers' access to the Service is limited to the number of units indicated on the applicable Order. If Customer or any Authorized Employer desires to extend access to the Hosted Services during any Service Term to any additional units beyond those provided on the original Order, Apex will amend the applicable Order to reflect such addition upon Customer's payment of an appropriate incremental fee determined at the same per-unit price. The Fees may be based on one or more of the following units, as set forth on the applicable Order:

a. Per "Check," which unit consists of each document or payment produced, in paper, electronically or other form, for the payment or recording of payments to an employee, employer, or third party, including, but not limited to, employee paychecks, direct deposit vouchers, direct deposit transaction, tax payment checks, voided checks, manual

checks, reprints of checks, third party checks or payments. Each transaction completed through the Hosted Services to pay or record payment of an employee or any other party is a Check for purposes of these Terms of Service.

b. Per "Customer ID", which unit consists of each separate Customer ID included in Customer's account.

c. Per End User, which unit consists of each End User with active, assigned Access Credentials.

d. Per "Employee" per month (or "PEPM"), which unit consists of each employee or independent contractor (according to Customer's or the Authorized Employer's designation in the Services) associated with an active Client in the Apex Services at issue that is considered "active" during the month at issue, either based on Customer's or the Authorized Employer's designation of such person as an "active" employee or contractor, or because any Service-related transactions are included in the Hosted Services for such personal at any time during the month (or portion thereof) at issue;

e. Per "Transaction", which unit consists of each W-2 or 1099 document produced, in paper, electronically or other form, for the recording of annual reporting of an employee's or third party's wages, taxes and/or benefit payments to an employee, employer, or third party. Each use of the Apex Services to report annual wages, taxes and benefit payments of an employee or any third party is a separate Transaction for the purposes of the Hosted Services; and

f. Any other unit described on the applicable Order.

7. Customer Data.

a. With respect to any Customer Data provided to Apex, Customer: (i) grants Apex the right to use, copy, modify, manipulate and create derivative works of the Customer Data as necessary in order for Apex to provide and perform the Hosted Services; (ii) agrees to secure rights in the Customer Data necessary for Apex to provide the Hosted Services without violating the rights of any third party, or otherwise obligating Apex to Customer or any third party (except as otherwise set out in this Agreement). Apex will implement reasonable and appropriate technical and organizational measures to help secure the Customer Data against accidental or unlawful loss, access, or disclosure. Customer agrees that these measures are (i) Apex's only responsibility with respect to the security and handling of Customer Data, except as otherwise required by applicable law or as otherwise may be agreed to by Apex in writing; and (ii) in lieu of, and not in addition to, the confidentiality terms of Section 7(a) of the General Terms. Except as otherwise required by applicable law, Apex does not and will not accept any obligations in any separate license or other agreement that may apply to the Customer Data or use of the Hosted Services. Apex may transmit or disclose Customer Data to third parties in accordance with Customer's or its End User's directions (whether via the Hosted Services or otherwise).

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

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

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

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