

APS Subscription Agreement

This APS Subscription Agreement (this “**Agreement**”) is by and between Automatic Payroll Systems, Inc. (“**APS**”, “**we**”, “**us**” and “**our**”) and the Customer (also referred to herein as “**you**”) identified on the applicable Order Form (as defined below). This Agreement is effective as of the date set forth on the applicable order document (including any online forms) provisioning or requesting the Services (as defined below) issued by APS or its authorized resellers which specify the Services to be provided under this Agreement (each, an “**Order Form**”). You acknowledge and agree that no term in any order or other instrument entered into between Customer and any reseller of the Services will modify this Agreement unless previously consented to in writing by APS. APS and Customer may be referred to individually as a “**Party**” and together as, the “**Parties**.”

PLEASE REVIEW THIS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT OR OTHERWISE ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES.

THIS AGREEMENT REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, OR YOUR ACCESS TO OR USE OF THE SERVICES, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS AGREEMENT, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 11 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

If you are entering this Agreement, registering for an APS account or using the Services on behalf of an entity or other organization, references to “you” are to such entity or organization and you are accepting this Agreement for that entity or organization and representing to APS that you have the authority to bind that entity or organization to this Agreement (the term “**Customer**” will also refer to that entity or organization).

1. THE SERVICES.

- a. **Provision of the Services.** The “**Services**” means, collectively, the current and future technology services and related software and service provided by APS, including without limitation on any website and subdomain provided by APS, and other related software, content, and services, including all versions, upgrades, improvements, updates, enhancements, corrections, fixes, release notes and changes thereto. During the Term (as defined herein) and subject to Customer’s and its Authorized Users’ (as defined herein) compliance with the terms and conditions of this Agreement (including those in an applicable Order Form), APS hereby grants Customer a limited, non-exclusive, non-sublicensable, non-transferable, revocable right under each Order Form to access and use the Services as specified in each applicable Order Form for Customer’s *bona fide* internal business use in the ordinary course of Customer’s business (the “**Internal Purpose**”).
- b. **Additional Services.** Without limiting the terms of this Agreement, if you purchase access to one or more of the Services which are governed by additional terms provided at <https://apspayroll.com/legal/agreements/> (each, “**Additional Terms**”), then you also agree to be bound by such Additional Terms. Furthermore, you agree that your access to and use of the Services shall comply with and be subject to any acceptable use policy, and other guidelines instituted by APS (collectively, “**Policies**”).
- c. **Privacy.** In addition to this Agreement, the Privacy Policy at <https://apspayroll.com/about-us/privacy-policy/> (“**Privacy Policy**”) applies to how APS may process information provided as part of the Services. You acknowledge and agree that by accessing or using the Services, APS may receive certain information about you, including personal data, as set forth in the Privacy Policy, and APS may collect, use, disclose, store, share, and process such personal data in accordance with such Privacy Policy. You further agree

that, to the extent applicable, you hereby agree to the Biometric Privacy Policy at <https://apspayroll.com/legal/agreements/biometric-policy>.

- d. **Professional Services.** To the extent that Customer has purchased professional and implementation services, including without limitation any professional development services, professional tax services, setup services and additional configuration services related to the Services (collectively, “**Professional Services**”) pursuant to an Order Form, such Professional Services shall be governed by the Professional Services Terms, provided at <https://apspayroll.com/legal/agreements/prof-services>, which such Professional Services Terms form a completely separate agreement with APS from this Agreement.
- e. **Mobile Apps.** APS may make available mobile software applications for access to and use of certain components of the Services (collectively, “**Mobile Apps**”). Your access to and use of Mobile Apps is subject to and governed by this Agreement, and any Mobile Application End User License Agreements applicable thereto, which are each hereby incorporated herein. If any Mobile App is downloaded by you from the iTunes App Store, Google Play or any similar service (an “**App Store**”), your use of such Mobile App is further subject to your compliance in all material respects with the terms and conditions of the applicable usage rules set forth by such App Store. This Agreement is between you and APS only, and not with the proprietor of any App Store (a “**Third Party Proprietor**”), and no Third Party Proprietor is responsible for Mobile Apps and the contents thereof; however, any Third Party Proprietor and its subsidiaries are third-party beneficiaries of this Agreement with respect to Mobile Apps.
- f. **Customer-Owned Data.** All data or other information uploaded or provided by or on behalf of Customer to the Services (collectively, “**Customer Data**”) remains the property of Customer, as between APS and Customer. Customer represents, warrants and agrees that Customer has all rights to provide the Customer Data and other materials that Customer provides or makes available to APS. Customer acknowledges and agrees that it is solely responsible for all Customer Data and for its conduct while using the Services. Customer acknowledges and agrees that: (i) it will evaluate and bear all risks associated with its use and distribution of all Customer Data; (ii) it is responsible for protecting and backing up the Customer Data; (iii) it is responsible for protecting the confidentiality of all Customer Data in its possession and control; and (iv) under no circumstances will APS be liable in any way for the content of any Customer Data, including, but not limited to, any errors or omissions in any Customer Data, or any loss or damages of any kind incurred as a result of Customer’s use, deletion, modification, or correction of any Customer Data. Customer has full discretion and control on how to store, protect, remove or delete any Customer Data on the Services and APS shall have no liability for any damages caused by such deletion or removal of or failure to store or protect Customer Data. Without limiting the foregoing, in the event that you request that APS provide any Customer Data (including employee and contractor information) to any third party or to any non-U.S. Customer location, you represent that you have acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable laws. By providing any Customer Data to APS, you hereby grant and will grant APS a nonexclusive, worldwide, royalty-free, fully paid up, transferable, sublicensable, license to copy, display, upload, perform, distribute, model, index, store, modify, create derivative works from, and otherwise use your Customer Data to provide the Services and interoperability with Third Party Offerings, including, without limitation, as set forth in this Agreement and the Privacy Policy and the Biometric Privacy Policy. You understand that the technical processing and transmission of the Services, including Customer Data, may involve (1) transmissions over various networks; and (2) changes to conform and adapt to technical requirements of connecting networks or devices. During the term of this Agreement, and in addition to Section 6.d, Customer authorizes APS to use the Customer Data for any lawful purpose, including (i) the sale, disclosure, access, provision and transmission of the Customer Data to its third party providers, for which APS may receive compensation, (ii) the right to use the Customer Data to perform the Services, and (iii) the right to use Customer Data to enhance the Services and other technology and offerings. During the term of this Agreement, Customer may export its Customer Data as allowed by functionality within the Services.
- g. **Affiliates and Authorized Users.** Customer may authorize or permit its affiliates to access the Services by entering into an Order Form, establishing accounts or otherwise through Customer’s account, subject to compliance with applicable restrictions in the Agreement, at law and as otherwise communicated by APS, and this Agreement will apply as if such affiliate were a party to this Agreement and references herein to “you” or “Customer” shall also refer to such affiliate of Customer. Subject to each of their compliance with

the terms and conditions of this Agreement and any applicable Additional Terms and Policies, employees and contractors of Customer who are authorized by Customer (collectively, “**Authorized Users**”) may access and use the Services on Customer’s behalf and pursuant to unique Credentials (as defined herein) which are associated with Customer’s account on the Services. Customer agrees that: (i) it is responsible for ensuring that all Authorized Users agree in a legally enforceable manner to abide by and fully comply with the terms and conditions of this Agreement and any applicable Additional Terms and Policies; (ii) it is solely responsible for delineating responsibilities and for all permissions controls applicable to each such Authorized User; (iii) such use is only in connection with the Internal Purpose; (iv) such use does not represent or constitute an increase in the scope of the licenses provided hereunder or under any applicable Additional Terms (including an increase in the number of authorized Authorized Users, if applicable); (v) Customer remains fully responsible and liable for any and all acts or omissions by such Authorized Users related to this Agreement and the Additional Terms and Policies; and (vi) the Services may only be accessed by Authorized Users who: (A) are at least thirteen (13) years of age or, if different in the applicable jurisdiction of the Authorized User, the legal age to form a binding contract; (B) have the right, authority and capacity to agree to and abide by this Agreement and any applicable Additional Terms and Policies; and (C) are not a person barred from using the Services under the laws of the applicable jurisdiction.

- h. **Protection. “Credentials”** means Authorized User accounts, passwords and other authentication credentials associated with the use of the Services by Customer and Authorized Users. Customer shall be solely responsible for protection of the confidentiality of Credentials and all activities undertaken using Credentials and any account, database, hardware, system or other facility within Customer’s custody or control (collectively, “**Customer Facilities**”). In the event that Customer becomes aware of any unauthorized access to or use of the Services through use of Customer Facilities, Customer shall promptly give written notice to APS of such breach and make reasonable efforts to eliminate it. Customer shall at all times implement appropriate security policies and procedures and access control methodologies to safeguard access to and use of the Services through Customer Facilities. All such measures shall comply with prevailing industry standards but in no case consist of less than reasonable care.
- i. **Customer Responsibilities.** Customer: (i) must, prior to making any payments through the Services, verify the identity of each payee to whom it will make a payment via the Services; (ii) must verify and validate for accuracy all disbursement records and other reports prepared by APS and delivered to Customer, and immediately notify APS of any discrepancies; (iii) must verify for accuracy all payroll data and remittance of all non-tax payments; and (iv) is fully responsible for the accuracy and completeness of all Customer Data, and must obtain any required consents and provide such other notices as required by applicable law or its contracts to provide the Customer Data (including any personal information contained in the Customer Data) to APS for the uses contemplated by this Agreement, including so that APS can provide Customer Data to its third party providers.
- j. **Compliance with Laws.** Each Party agrees to comply, and to cause its Authorized Users and affiliates to comply, with all applicable laws, including but not limited to, anti-bribery, anti-money laundering and other anti-corruption laws, and all applicable labor, wage and employment laws. Customer is solely responsible for compliance with any and all applicable laws, rules and regulations affecting its business, and for ensuring that it and its Authorized Users’ use of the Services comply with all export and import laws and regulations of the United States and any other applicable jurisdiction.
- k. **APS Support.** APS shall maintain a Client Support Center (“**CSC**”) that will utilize a ticketing system to receive service requests and reports of software irregularities. Customer may report software or operator problems and seek assistance in the use of the Services. APS will maintain a product-trained and knowledgeable staff capable of rendering the Services set forth in this Agreement. APS will use all reasonable diligence to correct verifiable and reproducible errors when reported to the CSC. The service level objective of the CSC will be to maintain a first time response rate of less than sixty (60) minutes a minimum of ninety percent (90%) of the time measured over three (3) consecutive months.
- l. **Third Party Offerings.** APS may have services delivered or performed by third parties, including applications, services, websites or software that complement or interoperate with your use of the Services (collectively, “**Third Party Offerings**”), available to you for use in connection with the Services. Customer

acknowledges and agrees that any use by Customer or any Authorized User of any Third Party Offerings may be subject to a separate agreement with such third party provider, which will govern Customer's and each Authorized User's use of such Third Party Offerings. APS makes no warranties of any kind and assumes no liability whatsoever for Customer's or any Authorized User's use of (or inability to use) Third Party Offerings, which are made available by APS "AS IS," "AS AVAILABLE" and "WITH ALL FAULTS."

2. SERVICE LEVEL AGREEMENT AND LIMITED WARRANTIES.

- a. **Availability Warranty.** APS warrants to Customer that APS will maintain the availability of the Services as provided in the chart below (excluding maintenance outages, outages beyond APS's reasonable control, and outages that result from any Customer technology issues).
- b. **Credit for Availability Warranty.**

Less than 99.9% measured over 3 consecutive months = 3% of the 3-month fee for each full hour of an outage (beyond the foregoing warranty). *
* Maximum amount of the credit is 100% of the fee for such 3 month period.

- c. **CUSTOMER'S EXCLUSIVE REMEDY AND APS'S SOLE OBLIGATION FOR ITS FAILURE TO MEET THIS WARRANTY WILL BE FOR APS TO PROVIDE A FEE CREDIT FOR THE APPLICABLE MONTH, AS PROVIDED IN THE CHART ABOVE, PROVIDED THAT CUSTOMER NOTIFIES APS OF SUCH BREACH WITHIN THIRTY (30) DAYS OF THE END OF THE MONTH DURING WHICH SUCH FAILURE OCCURRED. Any failure by APS to meet the above warranty will be determined by sole reference to APS's records.**

3. FEES.

- a. **Fees and Payment.** Customer agrees to have all fees owed to APS directly drafted from Customer's bank account for all Services. Except as otherwise set forth in an Order Form, fees will be drafted on or about the 10th of the month for the Services for the prior month (the "**Billing Month**"). APS will provide on or about three (3) days advance notice of the amount to be drafted for the Billing Month, and the date of same. In the event of a rejected transaction for insufficient funds, Customer understands that APS may, at its discretion, (i) attempt to process the debit in the amount of the applicable paid product again and APS may separately impose an additional fee for each transaction returned for insufficient funds, as permitted by applicable law and (ii) require Customer to make payment via ACH or wire. Furthermore, Customer understands and agrees that the Funding and Acknowledgment Terms provided at <https://apspayroll.com/legal/agreements/funding-terms> apply to any direct deposits and tax drafts required in connection with APS' provision of the Services hereunder, and Customer agrees to comply with such Funding and Acknowledgment Terms. Unless otherwise set forth in an applicable Order Form, for any Services which are specific to Customer's employee count, APS will charge for the Services based on the compensated employee count during each applicable month; provided however that if Customer does not run a payroll during that month, fees will be based on the employee count in the Order Form.
- b. **Subscriptions.** If Customer and its Authorized Users are accessing a portion of the Services pursuant to a monthly, annual or other subscription (each, a "**Subscription**"), any termination of this Agreement or any applicable Order Form prior to the end of the then-current Subscription period will take effect at the end of the current Subscription period. If Customer does not timely cancel its Subscription, such Subscription will be renewed pursuant to Section 7.b without any additional action by Customer, and Customer authorizes APS to charge its designated payment method for such amounts.
- c. **Taxes.** The fees are exclusive of sales, use, withholding, VAT and other similar taxes, and Customer is responsible for payment of such taxes at the rate and in the manner for the time being prescribed by law. If APS has the legal obligation to pay or collect taxes for which Customer is responsible under this section, APS will invoice Customer and Customer will pay that amount unless Customer provides APS with a valid tax exemption certificate authorized by the appropriate taxing authority. This agreement contemplates one or more orders for the Services, which orders are governed by the terms of this agreement.

- d. **Nonpayment.** Any invoiced amount not received by APS by the due date may accrue interest at the lower rate of 1.5% per month or the maximum rate permitted by law. In addition, if an invoiced amount is 30 days or more past due, APS may suspend the Services until the amount is paid in full, provided APS has given Customer at least 30 days' prior written notice that its account is past due.

4. DISCLAIMERS.

- a. **EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN THE ADDITIONAL TERMS, THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, APS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WHILE APS TAKES REASONABLE PHYSICAL, TECHNICAL, AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICES, APS DOES NOT GUARANTEE THAT THE SERVICES CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS AND AGREES THAT (I) THE SERVICES MAY NOT BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE, OR ERROR-FREE, (II) APS IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY OFFERING, (III) APS IS NOT RESPONSIBLE OR LIABLE FOR INCOMPLETE OR INACCURATE CUSTOMER DATA IN THE SERVICES, AND (IV) ALL CONTENT MADE AVAILABLE THROUGH THE SERVICES IS FOR INFORMATIONAL PURPOSES ONLY. YOU ARE SOLELY RESPONSIBLE FOR CONFIRMING THE ACCURACY OF ALL CONTENT BEFORE TAKING OR OMITTING ANY ACTION.**
- b. **Beta Disclaimer.** ALL SERVICES LABELED ALPHA, BETA, PRE-RELEASE, TRIAL, PREVIEW OR SIMILARLY ("**Beta Services**") ARE PROVIDED "AS IS", "AS AVAILABLE", WITH ALL FAULTS, AND CUSTOMER'S USE OF SUCH BETA SERVICES IS AT ITS SOLE RISK. APS has no obligations in connection with or in the course of providing the Beta Services. Any expectations and estimates regarding Beta Services are based on factors currently known and actual events or results could differ materially. APS does not assume any obligation to update any Beta Services. In addition, any information about APS' roadmap outlines APS' general product direction and is subject to change at any time without notice. It is for informational purposes only and shall not be incorporated into this Agreement or any contract or other commitment. APS undertakes no obligation either to develop the features or functionality provided in the Beta Services, or to include any such feature or functionality in a future release of the Services. Customer expressly acknowledges that the Beta Services have not been fully tested, and may contain defects or deficiencies which may not be corrected by APS. The Beta Services may undergo significant changes prior to release of the corresponding generally available final version.
- c. **No Advice or Endorsement.** Customer hereby acknowledges, understands and agrees that: (i) any content and information provided on the Services ("**Services Materials**") are not intended to be, and Customer and Authorized Users should not construe Services Materials as, legal, tax, investment, financial or other advice; (ii) nothing contained on the Services constitutes a solicitation, recommendation, endorsement or offer by APS to sell or buy anything; (iii) nothing on the Services constitutes professional and/or financial advice, nor do any Services Materials constitute a comprehensive or complete statement of the matters discussed or the law or regulations relating thereto; (iv) APS is not a fiduciary by virtue of Customer's or any Authorized User's use of or access to the Services and/or Services Materials; (v) Customer alone assumes the sole responsibility of evaluating the merits and risks associated with the use of or reference to Services Material before making any decisions based on such Services Material; (vi) APS shall not be held responsible or liable for any possible claim for damages arising from any decision Customer or its Authorized Users make based on information or Services Materials made available to Customer and/or Authorized Users.

5. CONFIDENTIALITY.

- a. **Definition of Confidential Information.** "**Confidential Information**" means all non-public information disclosed by a Party ("**Discloser**") to the other Party ("**Recipient**"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. APS's Confidential Information includes, without

limitation, the Services, pricing information, and the Mobile Apps. Customer's Confidential Information includes, without limitation, the Customer Data.

- b. **Protection of Confidential Information.** Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in each case not less than a reasonable degree of care) to: (i) not use any Confidential Information of Discloser for any purpose outside the scope of this Agreement; and (ii) limit access to Confidential Information of Discloser to those of its Authorized Users, employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient containing protections not materially less protective of the Confidential Information than those in this Agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) is independently developed by the Recipient without use of or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. OWNERSHIP.

- a. **Reservation of Rights.** APS and its licensors are the sole owners of the Services and the Mobile Apps, including all worldwide right, title and interest in and to the Services, including all worldwide patent rights (including patent applications and disclosures); copyright rights (including copyrights, copyright registration and copy rights with respect to computer software, software design, software code, software architecture, firmware, programming tools, graphic user interfaces, reports, dashboard, business rules, use cases, screens, alerts, notifications, drawings, specifications and databases); moral rights; trade secrets and other rights with respect to confidential or proprietary information; know-how; other rights with respect to inventions, discoveries, ideas, improvements, techniques, formulae, algorithms, processes, schematics, testing procedures, technical information and other technology; and any other intellectual and industrial property rights, whether or not subject to registration or protection; and all rights under any license or other arrangement with respect to the foregoing. Customer may not remove or modify any proprietary marking or restrictive legends in the Services or Mobile Apps. APS reserves all rights that are not expressly granted in this Agreement. The Services are copyrighted and protected by the laws of the United States and other countries, and international treaty provisions.
- b. **Feedback.** If you elect to provide or make available to APS any suggestions, comments, ideas, improvements or other feedback relating to the Services ("**Feedback**"), APS shall own and be free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you.
- c. **Restrictions.**
 - i. Customer *may not*: (a) use, reproduce, modify, adapt, create derivative works from, sublicense, publicly perform, publicly display, distribute, sell, lease, rent, make, have made, assign, pledge, transfer or otherwise grant rights to the Services, (b) provide use of the Services on a service bureau, rental or managed services basis, provide or permit other individuals or entities to create Internet "links" to the Services or "frame" or "mirror" the Services on any other server, or wireless or Internet-based device; (c) use the Service to store or transmit unsolicited marketing emails, libelous, or otherwise objectionable, unlawful, or tortious material, or to store or transmit infringing material in violation of third-party rights; (d) interfere with or disrupt the integrity or performance of the Services, including by disrupting the ability of any other person to use or enjoy the Services; (e) attempt to gain unauthorized access to the Services or its related systems or networks; (f) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive trade secrets, algorithms, or the source code, architectural framework, or data records, within or associated with the Services; (g) access the Services for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Services; (h) violate any applicable local,

state, provincial, federal or international law or regulation, or use the Services for any illegal, unauthorized or otherwise improper purposes, including to store or transmit malicious code, or to store or transmit material in violation of third-party privacy rights; (i) remove or obscure any proprietary notice that appears within the Services; (j) impersonate any person or entity, including APS personnel, or falsely state or otherwise misrepresent your affiliation with APS, or any other entity or person; (k) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through the Services; (l) take any action that imposes an unreasonable or disproportionately heavy load on the Services or its infrastructure; (m) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the Services; or download, reproduce, or archive any substantial portion of the Services; or (n) use the Services to send payments directly or indirectly to, or for the benefit of, any person or entity that is located in any country or jurisdiction that is subject to economic sanctions, identified on any internationally-recognized government list of prohibition, or owned or controlled by any person or entity described in the foregoing or allow any such person or entity to use the Services for any purpose.

- ii. Customer will not upload, post, email, store, transmit, or otherwise make available any content that: (a) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or otherwise objectionable; (b) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement); (c) infringes any patent, trademark, trade secret, copyright, or other proprietary right of any party; (d) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages, or any other form of solicitation; (e) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware; (f) contains infringing, libelous, or otherwise unlawful or tortious material; or (g) consists of information that you know or have reason to know is false or inaccurate.
 - iii. APS may suspend the Services to Customer and any Authorized User if APS believes in good faith that Customer's use of the Services poses an imminent threat to the security, availability or legality of the Services; in such event, APS will work with Customer to address the issue and restore Services as quickly as possible.
 - iv. APS's failure to enforce any of these restrictions or guidelines shall not act as a waiver for any future enforcement, will not be considered a breach of this Agreement by APS, and does not create a private right of action for any other party.
- d. **De-identified and Aggregated Data.** Customer hereby agrees that APS may collect, generate, and use Customer Data that has been aggregated in a manner that does not reveal any personally identifiable information and cannot reasonably be used to identify Customer or any Authorized User as the source of such data, and that all such data shall be owned by APS.

7. TERM AND TERMINATION.

- a. **Term.** The term of this Agreement shall commence upon the date set forth on the initial Order Form, and will continue until the earlier of all Order Forms or all Subscriptions have expired, unless earlier terminated as provided below (the "**Term**").
- b. **Term of Orders.** Unless otherwise stated in an Order Form, (i) all Order Forms and Subscriptions thereunder will automatically renew for additional one-year periods unless a Party notifies the other of non-renewal at least sixty (60) days prior to the renewal date, (ii) an automatically renewing Order Form will remain unchanged from the prior term except for any pricing increase of which APS has notified Customer sixty (60) or more days before the renewal date, and (iii) upon automatic renewal, the per-unit pricing for any subscription Services will not increase by more than five (5%) over that in the prior term unless the prior pricing was clearly designated in the Order Form as promotional or one-time.
- c. **Mutual Termination for Material Breach.** If either Party is in material breach of this Agreement or an Order Form, the non-breaching Party may terminate this Agreement or an Order Form if the breaching Party fails to cure such breach within thirty (30) days following receipt of written notice thereof. Either Party

may immediately terminate this Agreement if the other Party ceases business operations, becomes insolvent, or becomes the subject of a petition in bankruptcy, receivership, liquidation, or assignment for the benefit of creditors, provided however that such termination shall not affect Customer's obligation to pay any outstanding fees due to APS.

- d. **Effect of Termination.** Upon termination of this Agreement for any reason: (i) APS may retain Customer Data for so long as required to comply with applicable law and APS' reporting and regulatory requirements; (ii) Customer must export all Customer Data prior to the termination of this Agreement and shall not be provided access to Customer after such termination; (ii) Customer and all of its Authorized Users shall immediately cease all use of and access to the Services; and (iii) all licenses granted herein and in any Additional Terms shall immediately cease.
- e. **Survival.** Any provision that, by its terms, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination, including Sections 3, 4, 5, 6, 7.d, 7.e, 8, 9, 10, 11, and 12.

8. **LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT FOR EITHER PARTY'S VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF SECTION 5, BREACH OF SECTION 6.c, AND INDEMNIFICATION OBLIGATIONS UNDER SECTION 9: (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR COST OF COVER, OR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ANY USE OF OR INABILITY TO USE THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF THE SERVICES OR ITS DELIVERY VIA THE INTERNET, EVEN IF SUCH PARTY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (ii) SUBJECT TO CUSTOMER'S OBLIGATION TO PAY ALL FEES DUE UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES RECEIVED BY APS FROM CUSTOMER UNDER THIS AGREEMENT IN THE 3-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE EVENTS GIVING RISE TO LIABILITY AROSE. TO THE EXTENT ANY ADDITIONAL TERMS CONTAIN A LIMITATION OF LIABILITY PROVISION, THE LIMITATION OF LIABILITY SET FORTH THEREIN ARE EXCLUSIVE TO THE LIABILITY ARISING IN CONNECTION WITH THOSE SERVICES COVERED BY THE APPLICABLE ADDITIONAL TERMS, AND APS' AGGREGATE LIABILITY UNDER ALL APPLICABLE ADDITIONAL TERMS AND THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT SET FORTH IN THIS SECTION 8.**

9. **INDEMNIFICATION.**

- a. **APS Indemnification.** APS shall indemnify, defend and hold Customer harmless against any loss, damage, cost, liability and expense (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction or paid in settlement to the extent arising from any action or claim of a third party (collectively, "**Claim**") asserting that Customer or Authorized Users' use of the Services infringes the intellectual property rights of such third party; provided, however, that APS shall have no obligation to indemnify Customer from any Claim to the extent it arises from: (i) use of the Services by or on behalf of Customer in any manner that does not comply with the terms and conditions of this Agreement or applicable laws or regulations; (ii) use of the Services by or on behalf of Customer in combination with any hardware or software not provided or approved by APS; (iii) modifications to the Services made by or on behalf of Customer that are not authorized by APS; or (iv) any Customer Data (the foregoing subsections (i) through (iv), collectively, "**Customer Acts**"). In the event that any part of the Services becomes the subject of a Claim or APS reasonably determines that any part of the Services is likely to become the subject of a Claim, APS may, at its sole discretion: (1) procure for Customer a license as necessary for Customer to exercise the rights granted by APS under this Agreement; (2) modify or replace the infringing portion of the Services to avoid infringement; or (3) terminate the applicable Order Form and provide a pro rata refund of the fees paid by Customer to APS for the unused portion of the Term, as applicable, under such Order Form. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND APS'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.**

- b. **Customer Indemnification.** Customer agrees that APS shall have no liability and Customer shall indemnify, defend and hold APS harmless against any Claim to the extent arising from: (i) Customer Acts or Customer's breach of Section 6.c; (ii) any violation of applicable laws or regulations by Customer or Authorized Users; (iii) any breach by Customer or Authorized Users of any agreement governing use of Third Party Offerings; (iii) any use by Customer or Authorized Users of Customer Data except as permitted by this Agreement or otherwise and as separate from Customer's or Authorized Users' use of or access to the Services; and (iv) any instruction given by Customer to APS or any incomplete or incorrect information provided by Customer to APS .
- c. **Procedure.** The indemnified Party shall: (i) give the indemnifying Party prompt written notice of any Claim; provided, however, that failure of the indemnified Party to give such prompt written notice shall not relieve the indemnifying Party of any obligation to indemnify pursuant to this Section 9, except to the extent the indemnifying Party has been prejudiced thereby; (ii) cooperate fully with the indemnifying Party, at the indemnifying Party's expense, in the defense or settlement of any Claim; and (iii) give the indemnifying party sole and complete control over the defense or settlement of any Claim; provided, however, that any settlement must include a complete release of the indemnified Party without requiring the indemnified Party to make any payment or bear any obligation.

10. GOVERNING LAW AND FORUM.

This Agreement is governed by the laws of the State of Louisiana (without regard to conflicts of law principles) for any dispute between the Parties or relating in any way to the subject matter of this agreement. Nothing in this agreement prevents either Party from seeking injunctive relief in a court of competent jurisdiction. The prevailing Party in any litigation is entitled to recover its attorneys' fees and costs from the other Party . The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the Parties do business or are incorporated.

11. ARBITRATION.

ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION RATHER THAN IN COURT. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that such hearing shall be conducted in Shreveport, Louisiana or, if the Consumer Arbitration Rules apply, another location reasonably convenient to both Parties with due consideration of their ability to travel and other pertinent circumstances, as determined by the arbitrator. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

EACH PARTY AGREES THAT ALL CLAIMS SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR OTHER SIMILAR PROCESS (INCLUDING ARBITRATION). IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN SHREVEPORT, LOUISIANA. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM *NON-CONVENIENS* OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

Notwithstanding anything to the contrary, you and APS may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect its intellectual property rights, whether in aid of, pending, or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 11.

If APS implements any material change to this Section 11, such change shall not apply to any claim for which you provided written notice to APS before the implementation of the change.

12. MISCELLANEOUS.

- a. **Entire Agreement.** This Agreement (including all Order Forms, Additional Terms and Policies) comprises the entire and exclusive agreement between the Parties with respect to its subject matter, supersedes any prior or contemporaneous proposals, statements, materials, negotiations or agreements, whether oral or written, related to its subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this Agreement. No representation, promise, or inducement not included in this Agreement is binding.
- b. **Amendment of Order Form.** Unless otherwise set forth in an Order Form, no Order Form may be amended except in a writing executed by an authorized representative of each Party
- c. **No Waiver.** The failure of either Party to require strict performance by the other Party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any waiver of the provisions of this Agreement, or of any breach or default hereunder, must be set forth in a written instrument signed by the Party against which such waiver is to be enforced.
- d. **Assignment; Delegation.** Customer may not assign this Agreement, or sublicense, assign or delegate any right or obligation hereunder, by operation of law or otherwise without the prior written consent of APS. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. APS may, in its sole discretion, use vendors or contractors to help provide the Services, and may change its use of such vendors or contractors without notice to you; *provided, however*, that APS will remain responsible for the acts and omissions of such vendors and/or contractors. To the extent consistent with applicable law, APS may also receive commissions, referral fees or other sources of revenue with respect to any use of the Services and/or certain Third Party Offerings.
- e. **Notices.** All notices to Customer required or permitted under this Agreement hereto will be in writing and delivered in person, by email to the address designated in the applicable Order Form, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. Notices to APS shall be made to the attention of the "Legal Department" and sent via mail to 3010 Knight Street, Suite 300, Shreveport, LA 71105, with a copy sent via email to contracts@apspayroll.com.
- f. **Export Compliance.** The Services and Confidential Information may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Neither Party will permit its personnel or representatives to access any Services in a U.S.-embargoed country or in violation of any applicable export law or regulation.
- g. **Independent Contractors.** The relationship between APS and Customer established by this Agreement is solely that of independent contractors. Neither Party is in any way the partner or agent of the other, nor is either Party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other Party, without the express prior written consent of such other Party.
- h. **Enforceability and Force Majeure.** If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement. Neither Party shall be liable for any failure to perform under this Agreement to the extent due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection or any other cause beyond the reasonable control of the Party invoking this provision.
- i. **No Additional Terms.** APS rejects additional or conflicting terms of a Customer's form purchasing document.

- j. **Order of Precedence.** If there is an inconsistency between this Agreement and an Order Form, the Order Form prevails.