

APOS SOFTWARE LICENSE/SUBSCRIPTION AGREEMENT

THIS SOFTWARE LICENSE/SUBSCRIPTION AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN APOS SYSTEMS INC. ("**APOS**") AND THE INDIVIDUAL, ORGANIZATION OR ENTITY INSTALLING ("**LICENSEE**") THE SOFTWARE (AS DEFINED BELOW) AND/OR SUBSCRIBING FOR THE RIGHT TO USE THE SOFTWARE AS SET IN THE ORDERING AGREEMENT (AS DEFINED BELOW). **[IN THE CASE WHERE LICENSEE IS AN ENTITY OR AN ORGANIZATION, THEN THE INDIVIDUAL INSTALLING THIS SOFTWARE, REPRESENTS AND WARRANTS TO APOS THAT IT IS AN AUTHORIZED REPRESENTATIVE COMPLETING THIS PROCESS ON BEHALF OF SUCH ENTITY OR ORGANIZATION) AND WILL BE ACCEPTING THIS AGREEMENT ON BEHALF OF THE ENTITY FOR WHICH IT REPRESENTS (E.G., AN EMPLOYER) AND ACKNOWLEDGE THAT SUCH ENTITY WILL BE LEGALLY BOUND BY THIS AGREEMENT.**

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE APOS SOFTWARE ACCOMPANYING THIS AGREEMENT, WHICH MAY INCLUDE COMPUTER SOFTWARE, ASSOCIATED MEDIA, PRINTED MATERIALS AND ONLINE OR ELECTRONIC DOCUMENTATION ("**SOFTWARE**").

BY PURCHASING A LICENSE TO USE THE SOFTWARE FROM APOS OR A RESELLER (AS DEFINED BELOW), LICENSEE AGREES TO BE BOUND BY THE PROVISIONS OF THIS AGREEMENT. BY CLICKING "I AGREE" AND/OR CLICKING THE APPLICABLE BUTTON TO COMPLETE THE INSTALLATION PROCESS OR BY EXECUTING THIS AGREEMENT OR THE ORDERING AGREEMENT THAT RELATES TO THIS AGREEMENT, LICENSEE CONFIRMS ITS AGREEMENT OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ALL OF ITS TERMS AND CONDITIONS, LICENSEE MUST CLICK THE APPROPRIATE BUTTON TO CANCEL THIS PROCESS, DO NOT INSTALL, ACTIVATE OR USE THE SOFTWARE (INCLUDING ANY ACCOMPANYING WRITTEN MATERIALS).

1. DEFINITIONS AND INTERPRETATION:

- (a) **Definitions.** Capitalized terms used in this Agreement, and not otherwise defined elsewhere in this Agreement, shall have the following meanings:
 - (i) **"Effective Date"** means the date the Ordering Agreement is entered into by APOS and the Licensee.
 - (ii) **"IT Service Provider"** means a third party delivering information technology services to Licensee pursuant to a written contract with Licensee.
 - (iii) **"License Key"** means the unique code or serial number that enables activation and use of an instance of the Software.
 - (iv) **"License Option"** means the specific rights, restrictions, and obligations under which Licensee may install and use the Software pursuant to this Agreement, which is selected and/or indicated in the Ordering Agreement, which may include, but not be limited to, the number of users, the number and/or types of instances or deployments of the Software that Licensee may install, permitted locations for installing the Software, limitations on use of the Software by end users (if any) and limitations on the number of reports which may be generated from the use of the Software.
 - (v) **"Maintenance Services"** means maintenance services provided by APOS whereby Licensee will be entitled to receive: (i) any modification, improvement, enhancement, update, upgrade, new release and/or other change made to the

Software as made available by APOS from time to time; and (ii) standard technical support, all in accordance with APOS' then current documentation and policies.

(vi) **"Ordering Agreement"** means any quotation, proposal, transactional document, ordering agreement or invoice entered into by Licensee with APOS or a Reseller or an invoice issued by APOS or a Reseller that sets forth the APOS proprietary software solution or add-on modules to APOS software product procured by Licensee and the applicable License Option(s) for use of such software.

(vii) **"Reseller"** means an authorized reseller or distributor of the Software.

(b) **Conflict.** To the extent of any conflict or inconsistency between the provisions of this Agreement and an Ordering Agreement, the terms of the Ordering Agreement shall supersede and control over any conflict terms of this Agreement to the extent necessary to resolve such conflict or inconsistency. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any acknowledgement or confirmation or other document issued by Licensee. Notwithstanding the foregoing, if Licensee enters into an Ordering Agreement (including a quotation, proposal or master services agreement, or any similar form of contract) directly with a Reseller, the terms and conditions thereof will be directly between Licensee and the applicable Reseller; provided however, notwithstanding anything in this Agreement, no Ordering Agreement issued by a Reseller may modify or supersede the terms applicable to the Software in this Agreement. Except as expressly agreed in writing by APOS and Licensee, no purchase order or other document submitted by Customer or any Reseller, whether in connection with an order, Ordering Agreement, a request for services or otherwise, shall be effective to vary the terms of this Agreement.

2. INSTALLATION AND USE

Licensee may install and use the Software either under a Trial License (as defined below) or a Commercial License (as defined below) and all such installation and use shall comply with the specific rights and restrictions applicable to such license set forth in this Agreement. Licensee may also install non-production copies of the Software as is reasonably necessary for testing, disaster recovery, emergency restart and backup, including, but not limited to, making copies for such purposes for use at one or more disaster recovery sites.

Under the licenses granted to Licensee under this Agreement, Licensee may permit its IT Service Providers to access, use and/or operate the Software on Licensee's behalf for the sole purpose of delivering services to Licensee, provided that Licensee will be fully responsible for its IT Service Providers' compliance with terms and conditions of this Agreement and any breach of this Agreement by an IT Service Provider shall be deemed to be a breach by Licensee.

3. TRIAL LICENSE TERMS

If Licensee is licensing a trial version of the Software, APOS grants Licensee a limited, revocable, personal, non-transferable, non-exclusive license to install and use the Software for time-limited evaluation purposes, only in accordance with the terms and conditions set forth herein (a **"Trial License"**). Licensee may only use the Software to test the functionality of the Software and, for greater certainty, Licensee may not use the Software for any commercial or production use. Trial Licenses shall be further limited to the specific installation and use rights and restrictions that APOS makes available to Licensee and shall last for the length of time specified by APOS, in its sole discretion. The duration of Trial Licenses may be extended or cancelled at any time by APOS in its sole discretion. Upon lapse of the Trial License, all of or part of the functionality of the Software will be disabled automatically. If Licensee wishes to use the Software after the trial period, Licensee must purchase a Commercial License to use the Software. Licensee acknowledges that trial versions of the Software contain time lock and/or time expiry functionality and code. APOS SHALL HAVE NO WARRANTY OR OTHER OBLIGATIONS TO LICENSEE FOR TRIAL LICENSES. The foregoing

sentence shall survive the termination or expiration of this Agreement. If Licensee is using the software under a Trial License, then the following Sections 4 and 9 of this Agreement shall not apply to Licensee. With respect to Trial Licenses, this Section 3 shall prevail over any conflicting provisions in this Agreement.

4. COMMERCIAL LICENSE

If APOS or an APOS Reseller has provided Licensee with a purchase invoice ("**Invoice**") setting forth, among other things, the Software ordered, the License Option (as defined below), the Subscription Term (if applicable) and all contact information for Licensee (including, but not limited to, contact name, address, email address or telephone number), then Licensee is licensing the Software under a commercial license (a "**Commercial License**"). Unless Licensee notifies APOS within 10 days of the date of the Invoice of any inaccuracies in the Invoice, Licensee shall be deemed to have confirmed the accuracy of the information and to have accepted the terms and conditions set out therein. By accepting the terms and conditions of this Agreement, Licensee also accepts the applicable License Option.

In consideration of payment of the applicable fees for Licensee's Commercial License and Licensee's agreement to abide by the terms and conditions of this Agreement, APOS hereby grants to Licensee during the Subscription Term (as defined below), a non-exclusive, non-sublicenseable, non-transferable, limited, revocable and license to install and use the Software solely: (i) in accordance with the License Option acquired; (ii) on computer systems owned or leased by Licensee; (iii) for Licensee's internal use; and (iv) in accordance with the terms and conditions for this Agreement.

5. LICENSE KEYS

Installation and use of the Software and the continued use thereof require License Keys issued by APOS. Licensee will provide APOS or, if applicable, the Reseller, with any information required by APOS to generate and issue Licensee's License Keys and Licensee represents, warrants and covenants to APOS that any such information provided to APOS will be accurate and complete.

6. THIRD PARTY SOFTWARE

Licensee may be required to use or access certain third party software products in connection with Licensee's installation and/or use of the Software ("**Third Party Software**"). The Third Party Software which is required for the use of the Software is set out in the documentation accompanying the Software or made available to the Licensee by APOS, as may be amended from time to time. All Third Party Software used by Licensee is subject to end user license agreements and/or other license terms and conditions specific to each Third Party Software supplier, as such agreements or terms may be amended from time to time (the "**Third Party License Terms**"). By using any Third Party Software, Licensee agrees to be bound by the applicable Third Party License Terms, as such terms may be amended from time to time. Licensee acknowledges and agrees that APOS disclaims all liability related to, and APOS shall not otherwise be liable in respect of, all Third Party Software.

7. RESTRICTIONS

Licensee acknowledges that the Software and the structure, organization and source code of the Software constitute valuable trade secrets of APOS. Accordingly, except as expressly permitted by this Agreement, or by applicable law, Licensee shall not, and shall not permit any party (including, but not limited to, any of Licensee's employees or its IT Service Providers) to: (a) sell, lease, loan, resell, rent, transfer, assign, sublicense, or otherwise distribute the Software or any of the rights granted by this Agreement without the express written permission of APOS; (b) use the Software to provide or operate Application Service Provider (ASP), service bureau, marketing, third party training, outsourcing services, or consulting services, or any other commercial service related to the Software; (c) modify (even for purposes of error correction), adapt, or translate the Software or create derivative works therefrom, except as necessary to configure the Software using the menus, options and tools provided for such purposes and contained in the Software; (d) in any way reverse engineer, disassemble or decompile the Software or any portion thereof except to the

extent and for the express purposes authorized by applicable law notwithstanding this limitation; (e) use the Software to develop a product which is competitive with the Software or any APOS product offerings; (f) use unauthorized keycode(s) or distribute keycode(s); (g) disclose any Software benchmark results to any third party without APOS' prior written approval, (h) permit third party access to, or use of the Software except as expressly permitted herein, (i) distribute or publish keycode(s), (j) alter, remove, or obscure any copyright, trade secret, patent, trademark, logo, proprietary and/or other legal notices on or in copies of the Software; (k) use APOS' name, trade names, logos, or other trademarks of APOS, or any of its affiliates or licensors, whether in written, electronic, or other form, without APOS' prior written consent; (l) access or use software that Licensee is not currently licensed to access or to use; and/or (m) commit any act which would directly or indirectly violate any Canadian or U.S. law, regulation, treaty, or other agreement, relating to the export or re-export the Software, to which Canada or the U.S. adheres or with which Canada or the U.S. complies.

8. MAINTENANCE AND SUPPORT

The purchase of a Commercial License for the Software includes the purchase of Maintenance Services (as defined above) during the Subscription Term as set out in the Ordering Agreement. The purchase of a Commercial License for the Software does not include the provision of any professional services from APOS. Additional support or professional services may be obtained and provided by APOS pursuant to the terms of a separate agreement to be entered into between Licensee and APOS.

9. AUDIT RIGHT

Licensee will keep accurate records relating to Licensee's use of the Software in accordance with generally accepted accounting principles and standard business practices in the Licensee's industry. Such records shall include, without limitation, records of usage of the Software including records in respect of any usage which is restricted by any Ordering Agreement (such as number of reports permitted to be generated using the Software). If Licensee exceeds the license or usage limitations set forth herein or in any Ordering Agreement, Licensee must purchase additional usage rights/subscriptions at APOS' then current prices. APOS has the right to, at any time, request information from the Licensee that confirms whether or not the license or usage limitations set forth herein or in any Ordering Agreement have been exceeded. Licensee agrees that within 15 days of written request from APOS, it will fully document and certify whether or not the license or usage limitations have been exceeded.

In addition, APOS or its agents may inspect Licensee's records on 5 business days written notice to Licensee. Such inspections are solely for the purpose of verifying Licensee's compliance with the provisions of this Agreement. In the event any such inspection reveals an underpayment by Licensee, (a) Licensee will promptly remit the amount of the underpayment for the period covered by the inspection, and (b) if such underpayment exceeds ten percent (10%) of the payment due for the period covered by the inspection, Licensee will reimburse APOS for its reasonable expenses incurred in connection with the inspection. For certainty, where such inspections reveal excess usage which requires additional licenses/subscriptions of the Software, such excess usage shall constitute an underpayment hereunder. APOS' rights will remain in effect through the period ending one (1) year from the termination or expiration of this Agreement.

10. CONFIDENTIALITY

- (a) As used herein, "**Confidential Information**" means any business, marketing, technical, or other information disclosed by a party hereto (a "**Disclosing Party**") to the other party hereto (hereinafter a "**Receiving Party**") which, at the time of disclosure, is designated as confidential (or like designation) or is disclosed in the circumstances of confidence. The terms and conditions of this Agreement shall be considered Confidential Information. Confidential Information shall not include information which (a) was lawfully known or received by the Receiving Party prior to disclosure, as evidenced by its business records; (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through breach of this Agreement; (c) was disclosed to the Receiving Party by a third party, provided that such third party, or any other Party from whom such third party

receives such information, is not in breach of any confidentiality obligation in respect of such information; (d) is independently developed by the Receiving Party as evidenced by its business records.

- (b) All Confidential Information shall be retained by the Receiving Party in confidence and shall be used, disclosed and copied solely for the purposes of, and in accordance with, this Agreement. The Receiving Party shall use the same degree of care in protecting the Confidential Information received from the Disclosing Party, as it uses to protect its own Confidential Information of a similar nature, but in no circumstances, less than reasonable degree of care, to prevent the unauthorized use, disclosure, or publication of the Disclosing Party's Confidential Information.
- (c) The Receiving Party shall only disclose Confidential Information of the Disclosing Party to its employees or contractors who have a need to know such information for the purpose of allowing the Receiving Party to exercise and perform its rights and obligations under this Agreement. Prior to the disclosure of any Confidential Information to an employee or contractor of the Receiving Party, such employee or contractor must have entered into a written agreement with the Receiving Party which protects the confidentiality of the Disclosing Party's Confidential Information to at least the same degree as it is protected under this Agreement.
- (d) The Receiving Party may disclose Confidential Information of the Disclosing Party (i) to the extent required by applicable law, (ii) approved for release in writing by the Disclosing Party according to the terms stipulated in such approval, or (iii) as may be required during the course of, or in connection, with any litigation, arbitration or other proceeding, based upon or in connection with the subject matter of this Agreement, provided that, in both (i) and (iii), the Receiving Party shall give the Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order granted in respect of the Confidential Information.
- (e) Upon the termination of this Agreement, or at any time upon the Disclosing Party's request, Receiving Party shall deliver to Disclosing Party all Confidential Information and destroy all files, documents, computer programs and other media (and all copies and reproductions of any of the foregoing) in its possession or control to the extent same contain Confidential Information.

11. LIMITED WARRANTY AND REMEDY

- (a) **Limited Warranty.** APOS warrants that the Software will, if properly installed, perform substantially in accordance with its accompanying documentation for a period of ninety (90) days from the date of the Invoice. APOS does not, however, warrant that the Software will be free of all defects, errors, or inaccuracies. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. APOS does not warrant that the Software will meet Licensee's requirements. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Maintenance Services, shall not restart or otherwise affect the warranty period.
- (b) **Remedy.** Licensee's exclusive remedy for breach of the above-stated limited warranty shall be, at APOS' option, either: (i) correction or replacement of the Software with product(s) which conform to the above-stated limited warranty; or (ii) return of the price paid for the Software and termination of this Agreement with respect to those copies not in compliance. Such remedy shall be provided to Licensee by APOS only if Licensee gives APOS written notice of any breach of the above-stated limited warranty within ninety (90) days from the date of the Invoice. Except as set out in this Agreement, the remedy set forth in this Section 11(b) is Licensee's sole exclusive remedy for a breach of warranty, and is

APOS' (or any of its affiliated corporations and their respective directors, officers, employees or shareholders) entire liability and only warranty made with respect to the Software. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

12. INDEMNIFICATION

- (a) APOS shall defend, indemnify and hold Licensee harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Licensee by a third party alleging that the Licensee's use of the Software in accordance with this Agreement infringes the intellectual property rights of such third party, provided that Licensee: (a) promptly give written notice of the Claim to APOS; (b) gives APOS sole control of the defense and settlement of the Claim (provided that APOS may not settle any Claim unless it unconditionally releases Licensee of all liability); and (c) provides to APOS, at APOS' cost, all reasonable assistance in the defense of the Claim.
- (b) APOS will, at its sole option and expense: (a) procure for Licensee the right to continue using the Software under the terms of the Agreement; (b) replace or modify the Software to be non-infringing without material decrease in functionality; or (c) if the foregoing options are not reasonably practicable, terminate the license and/or this Agreement for the infringing Software and refund all pre-paid fees paid by Licensee.
- (c) APOS shall have no liability for any Claim to the extent that: (a) the Claim is based upon the use of the Software in combination with any other product, service or device not recommended or approved by APOS, if such Claim would have been avoided by the use of the Software without such product, service or device; (b) Software has been modified by a party other than APOS, its agents or Licensee acting at the direction of APOS, if a Claim would not have occurred but for such modifications; or (c) Licensee fails to use an updated or modified version of the Software provided by APOS at no cost to Licensee to avoid a Claim after notice by APOS to Licensee of the availability of such updated or modified version of the Software and the fact that use of same will cure such Claim.

13. DISCLAIMER OF OTHER WARRANTIES

EXCEPT AS OTHERWISE SET OUT IN THE AGREEMENT, LICENSEE EXPRESSLY UNDERSTANDS AND AGREES THAT THE INSTALLATION AND USE OF THE SOFTWARE IS AT LICENSEE'S SOLE RISK AND THAT, EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED ENTIRELY ON AN "AS-IS", "AS-AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, APOS AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF EVERY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND HIDDEN DEFECTS.

14. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, APOS AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF USE, PROFITS, GOODWILL, OR DATA, OR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSSES (EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SOFTWARE; (II) THE DELETION OF, CORRUPTION OF, INADVERTENT DISCLOSURE OF, OR FAILURE TO STORE AND/OR RECEIVE OR SEND CONTENT OR

TRANSMISSIONS USING THE SOFTWARE NOT CAUSED BY THE SOFTWARE OR A FAILURE OF, OR ERROR IN THE SOFTWARE; (III) THE CONDUCT, STATEMENTS, CONTENT, ACTS OR OMISSIONS BY LICENSEE OR ANY THIRD PARTY USING THE SOFTWARE OR PROVIDING ANY PRODUCT, SERVICE, FEATURE OR SUPPORT FOR THE SOFTWARE; (IV) UNAUTHORIZED ACCESS TO OR ALTERATION OF CONTENT OR TRANSMISSIONS BY LICENSEE OR ANY OTHER THIRD PARTY NOT CAUSED BY THE SOFTWARE OR A FAILURE OF, OR ERROR IN THE SOFTWARE; (V) APOS' ACTIONS, ERRORS OR OMISSIONS IN RELIANCE UPON ANY INFORMATION PROVIDED BY OR FOR LICENSEE OR THROUGH LICENSEE'S ACCOUNT, ANY CHANGES MADE THERETO, OR ANY NOTICES RECEIVED THEREFROM; (VI) LICENSEE'S FAILURE TO PROTECT THE CONFIDENTIALITY OF ANY PASSWORDS, CONTENT, OR ACCESS RIGHTS TO ITS ACCOUNT INFORMATION OR CONTENT CONTAINED THEREIN; OR (VII) THE USE OF ANY SOFTWARE OR FEATURE NOT DEVELOPED BY APOS (INCLUDING, BUT NOT LIMITED TO, ANY THIRD PARTY SOFTWARE).

EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, APOS' AGGREGATE LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE LICENSE FEES PAID FOR THE SOFTWARE.

EXCEPT IN RESPECT OF LIABILITY RELATED TO (A) LICENSEE'S CONFIDENTIALITY OBLIGATIONS TO APOS; (B) BREACH BY LICENSEE OF ANY LIMITATIONS OR RESTRICTIONS ON THE INSTALLATION OR USE OF THE SOFTWARE SET FORTH IN THIS AGREEMENT; AND/OR (C) LICENSEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, LICENSEE'S AGGREGATE LIABILITY TO APOS FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID BY LICENSEE TO APOS FOR THE SOFTWARE.

IN RESPECT OF LIABILITY RELATED TO (A) LICENSEE'S CONFIDENTIALITY OBLIGATIONS TO APOS; (B) BREACH BY LICENSEE OF ANY LIMITATIONS OR RESTRICTIONS ON THE INSTALLATION OR USE OF THE SOFTWARE SET FORTH IN THIS AGREEMENT; AND/OR (C) LICENSEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, LICENSEE'S AGGREGATE LIABILITY TO APOS FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO AN AMOUNT EQUAL TO THREE (3) TIMES THE FEES PAID BY LICENSEE TO APOS FOR THE SOFTWARE.

IN NO EVENT WILL LICENSEE BE LIABLE TO APOS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR REVENUES, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF LICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. TRANSFER OR ASSIGNMENT OF LICENSE

Licensee may not transfer, assign, or encumber any of its rights and obligations under this Agreement or in the Software without obtaining APOS' prior written consent and meeting the following conditions: (i) Licensee shall provide, in writing, the name and address of the transferee; and (ii) the transferee must agree in writing to be bound by this Agreement. Upon transfer, Licensee may not retain any copies of the Software.

16. TERMINATION

Notwithstanding any term of this Agreement, APOS may immediately terminate this Agreement and any licenses and services provided hereunder if: (i) APOS notifies Licensee in writing of a breach and such breach is not cured within thirty (30) days; or (ii) Licensee makes an assignment for the benefit of creditors or proceedings are commenced by or for Licensee under any bankruptcy, insolvency, or debtor's relief law. Termination shall not relieve Licensee from Licensee's obligation to pay fees that remain unpaid and shall not limit either party from pursuing other available remedies. This Agreement shall automatically terminate in the event that the Trial License expires and Licensee does not purchase a Commercial License.

Notwithstanding any term of this Agreement, Licensee may terminate this Agreement if Licensee notifies APOS in writing of a material breach of this Agreement by APOS and such breach is not cured within thirty (30) days.

Upon termination of this Agreement or any part thereof, for any reason, APOS shall have no obligation to refund to Licensee any fees paid by Licensee (including, but not limited to, fees for Maintenance Services), and Licensee agrees to waive, in perpetuity and unconditionally, any and all claims for refunds.

Upon termination of this Agreement: (i) all licenses granted herein shall immediately cease and Licensee shall immediately discontinue the use of the Software, (ii) Licensee shall return all copies and related documentation or, if directed by APOS, destroy the Software and related documentation, and (iii) neither party will be released from any liability which, at the time of termination, has already accrued to the other party or which is attributable, prior to such termination, nor will either party be prohibited from pursuing any rights and remedies it may have hereunder at law or in equity with respect to any breach of this Agreement prior to termination. If a Software license is revoked or expired, Licensee must certify in writing to APOS that Licensee has immediately un-installed and destroyed all copies of the Software within thirty (30) days of such revocation/expiration.

In addition as may be set forth in this Agreement, the following Sections survive termination of this Agreement: Sections 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.

17. OWNERSHIP AND RESERVATION OF RIGHTS

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. APOS does not sell any rights in or to the Software, but rather grants the right to use the Software pursuant to the terms of this Agreement. The Software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets," incorporated into the Software) shall at all times remain the property of APOS and/or APOS' licensors, as applicable, and Licensee shall have no right, title, or interest therein, except as expressly set forth in this Agreement. Any and all modifications, enhancements, improvements, changes and derivative works to APOS Software created by APOS or Licensee shall be the sole intellectual property of APOS. APOS exclusively reserves all rights not explicitly granted herein.

18. EXPORT

Licensee acknowledges that the Software may include encryption software that may be controlled for import, export or purposes under the laws and regulations of the country(ies) and/or territory(ies) in which the Software is used ("**Applicable Law**"). In particular, Licensee acknowledges that the Software is of Canadian origin, is subject to Canadian laws and regulations, and may be subject to restrictions on export or re-export to countries subject to Canadian embargoes or to persons or entities prohibited from receiving Canadian exports (including, but not limited to, those involved with missile technology or nuclear, chemical or biological weapons). Licensee hereby represents that (1) to the best of Licensee's knowledge, Licensee is eligible to receive the Software under Applicable Law; (2) Licensee will import, export, or re-export the Software to, or use the Software in, any country or territory only in accordance with Applicable Law; and (3) Licensee will ensure that other persons use the Software in accordance with the foregoing restrictions.

19. U.S. GOVERNMENT RESTRICTED RIGHTS

This Software is a commercial product that has been developed exclusively at private expense or with public funds from sources other than the United States Government. If the Software is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense contract, then pursuant to DOD FAR Supplement 227.7202-3(a), the United States Government shall only have the rights set forth in this Agreement; or (ii) a civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in FAR clause 27.405(b)(2)(i), entitled Acquisition of Existing Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in this Agreement. If this Agreement

and the licenses herein fail to meet the United States Government's needs or are inconsistent in any respect with U.S. federal procurement law, the government agrees to return the Software, unused, to APOS.

20. GENERAL

- (a) **Term:** The Term of this Agreement shall commence on the Effective Date and shall continue in effect for a period of one year or as otherwise defined in the Ordering Agreement (the "**Initial Term**"). Following the Initial Term, this Agreement shall automatically renew under the same terms for subsequent terms of 12 months each (each a "**Renewal Term**" and collectively with the Initial Term, the "**Term**") unless one of the Parties notifies the other party with at least thirty (30) days prior to the commencement of any Renewal Term of its intention to amend terms set out in this Agreement or to not to renew the Agreement
- (b) **Assignment and Transfer.** APOS may freely assign this Agreement. Licensee may not assign or otherwise transfer this Agreement, and its rights and obligations, in whole or in part, by operation of law or otherwise. This Agreement enures to the benefit of and shall be binding upon each parties' respective successors or permitted assigns.
- (c) **Revised Terms and Conditions.** APOS may revise the terms and conditions of this Agreement from time to time in its sole discretion. Revisions shall be effective at the end of the Subscription Term during which such revisions are made and such revisions shall govern any subsequent Renewal Term.
- (d) **Governing Law.** This Agreement is governed by the laws of the Province of Ontario, Canada and the federal laws of Canada applicable in that Province, without regard to conflicts of laws principles. Each of the parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario and Licensee agrees that any claim or action brought by Licensee shall be commenced in the courts of located in Kitchener, Ontario, Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (also called the Vienna Convention, and which is cited in the statutes of Canada as the *International Sale of Goods Contracts Convention Act*) will not apply to this Agreement.
- (e) **Miscellaneous.** If any provision of this Agreement, or portion thereof, is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision or portion thereof shall be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions. A waiver of any provision of this Agreement shall only be valid if provided in writing and shall only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, shall not act as a waiver of any right, promise or term, which shall continue in full force and effect. Unless otherwise agreed to by APOS in writing, this Agreement, together with the Invoice and all terms incorporated herein by reference, constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

Should Licensee have any questions concerning this Agreement, or if Licensee desires to contact APOS for any reason, please contact:

Head Office: 100 Conestoga College Blvd, Suite 1101, Kitchener, Ontario Canada N2P 2N6
Tel: 519.894.2767 Fax: 519.894.1891 Email: apos@apos.com
Technical Support: Email: support@apos.com Tel: 519.894.2767 Ext. 1