

MASTER LICENSE AGREEMENT
FOR
APTOLOGY HOSTED SERVICES

THIS MASTER LICENSE AGREEMENT ("AGREEMENT") GOVERNS YOUR ("CUSTOMER") RIGHT TO ACCESS AND USE THE APTOLOGY HOSTED SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY EITHER: (1) ELECTRONICALLY CLICKING THE BOX INDICATING ACCEPTANCE OF THIS AGREEMENT AND THE ASSOCIATED ORDER FORM, OR (2) EXECUTING AN ORDER FORM WITH SIGNATURE OR CLICK ACCEPT THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES.

IF THE INDIVIDUAL CONSIDERING ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

TERMS AND CONDITIONS. Customer's license and use of the Aptology, Inc. products and services specified in each Order Form mutually entered into hereunder are subject to all terms and conditions in this Agreement, including all schedules and attachments hereto (collectively, the "Agreement"). In the event of a conflict between an Order Form and this Agreement, the Order Form shall take precedence. All payments shall be made in U.S. dollars, all fees and purchases of licenses hereunder are non-cancelable and are non-refundable.

The parties' duly authorized officers or representatives have executed this Agreement to be effective as of the Effective Date set forth in the applicable Order Form.

1. **Definitions.**

1.1. "**Affiliate(s)**" means any person, firm, trust, partnership, corporation, company or other entity or combination thereof, which directly or indirectly, Controls the subject entity, is Controlled by the subject entity, or is under common Control with the subject entity. "**Control,**" for purposes of this definition, means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity. The use of the word "You", "Your" and "Customer" in this Agreement is inclusive of Customer and its Affiliates, provided Customer has the authority to bind such Affiliate to the terms and conditions of this Agreement and the use of the word "We," "Us" or "Our" means Aptology, Inc..

1.2. "**Aggregate Data**" means all anonymous, aggregated content, data, statistics, and other information generated by Our Hosted Services, which may include your content, provided that no such information will directly identify and cannot reasonably be used to identify You or Your Team.

1.3. "**Candidate**" means an applicant or prospective hire who You direct to use the Hosted Services only as part of Your hiring process.

1.4. "**Data**" shall mean information obtained by Us from Our content licensors or publicly available sources and provided to You pursuant to an Order Form, as more fully described in the Documentation.

1.5. "**Documentation**" means Our then current guides and manuals (printed or online) describing the use and

operation of the Hosted Services and Data that We publish and make generally available for the Hosted Service.

1.6. "**Hosted Services**" means the generally available Web-based, online, hosted software listed on an Order Form including, without limitation, all corrections, updates, modifications, releases, versions, and enhancements to such software that may hereafter be generally released by Us, but excluding Data. Hosted Services do not include separately created new products or services for which We charge a separate fee.

1.7. "**Malicious Code**" means viruses, worms, time bombs, Trojan horses, malware, and other harmful or malicious code, files, scripts, agents or programs.

1.8. "**Order Form**" means the ordering documents for Your purchases from Us that are executed hereunder by You and Us from time to time. Any Order Form is incorporated into this Agreement.

1.9. "**Personal Information**" means information that could be used to uniquely identify a person as an individual. Personal Information does not include data that has been anonymized such that it cannot be directly tied to a specific individual.

1.10. "**Subscription Term**" means the period of time that You may use and access the Hosted Services beginning on the start date and ending on the date set forth in the applicable Order Form. The Hosted Services may automatically deactivate and become non-operational at the end of the Subscription Term,

and You shall not be entitled to access the Hosted Services unless the Subscription Term is renewed.

1.11. **“Team”** means individuals who benefit from or are authorized by You to use the Hosted Services, for whom licenses for use of the Hosted Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request) or invited to participate. Team may include but are not limited to Your employees, all Candidates, consultants, contractors and agents, Affiliates, or third parties with whom You transact business.

1.12. **“Unit”** means the unit specified in an Order Form on which a license fee is based in the event that You have elected to purchase a license to use the Hosted Services on a per use basis (e.g. per candidate or individual) rather than a Subscription Term basis.

2. Grant of License.

2.1. **Grant.** The Hosted Services may be licensed on a Subscription Term basis or Unit basis as specified on the applicable order form. Subject to the terms and conditions of this Agreement, We hereby grant to You a non-exclusive and non-transferable license during any Subscription Term, or during consumption of Units licensed, as applicable to:, (a) access and use the Hosted Services and Data via the Internet, (b) allow Candidates to access the Hosted Services and Data via the Internet, and (b) use the Documentation provided by Us. Your purchase of Units or Subscription Term(s) for the Hosted Services is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written comments made by Us with respect to future functionality or features.

2.2. **Restrictions.** The license granted in Section 2.1 above is conditioned upon Your compliance with the terms and conditions of this Agreement. You may use the Hosted Services and Data solely for Your own internal business purposes, in compliance with applicable law, and shall not: (a) permit any third party to access the Hosted Services or Data except as permitted herein or in an Order Form, (b) license, sublicense, sell, resell, rent, lease, transfer, distribute, use the Hosted Services or Data for commercial time sharing, outsourcing or otherwise commercially exploit the Hosted Services or Data, (c) create derivative works based on the Hosted Services or Data, (d) modify, reverse engineer, translate, disassemble, or decompile the Hosted Services or Data, or cause or permit others to do so, (e) copy, frame or mirror any content forming part of the Hosted Services or Data, other than on Your own intranets or otherwise for Your own internal business purposes, (f) access the Hosted Services or Data in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Hosted Services or Data, and (g) remove any title, trademark, copyright, and/or restricted rights notices or labels from the Hosted Services, Data or Documentation.

2.3. **Reserved Rights.** We hereby reserve all rights in and to the Hosted Services not expressly granted in this Agreement. Nothing in this Agreement shall limit in any

way Our right to develop, use, license, create new and different products or services, derivative works of, or otherwise exploit the Hosted Service or to permit third parties to do so under Our direction and in compliance with the law.

3. Use of Services.

3.1. **Our Responsibilities.** We will routinely backup (not less frequently than once-per-day) all your content and use industry standard security measures to maintain Your Team' login information (e.g., User IDs and passwords) for the Hosted Services in confidence. All storage, backup and archival media, containing your content shall be (a) physically stored in a secure area, (b) logically separated from any other customer's data, and (c) protected by industry standard encryption methods.

3.2. **Your Responsibilities.** You shall be responsible for Your Team's compliance with this Agreement and for your content. You shall not (a) use the Hosted Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (b) use the Hosted Services to store or transmit Malicious Code, (c) interfere with or disrupt the integrity or performance of the Hosted Services, Data or third party data contained therein, or (d) attempt to gain unauthorized access to the Hosted Service or its related systems or networks. Any conduct by You that in Our discretion restricts or inhibits any of Our other customers from using or enjoying the Hosted Services is expressly prohibited. You will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Services or Data, and notify Us promptly of any such unauthorized access or use. You shall be responsible for obtaining and maintaining all equipment needed for access to and use of the Hosted Services and all charges related thereto.

4. Fees.

4.1. **Fee Basis.** When licensed on a Subscription Term basis, Hosted Services subscription fees are based on the stated planned Team for the Subscription Term specified in an Order Form. When licensed on a per Unit basis Unit fees are based on the number of Units specified in an Order Form.

4.2. **Payment.** You shall pay Us fees in accordance with the amounts and dates specified on the applicable Order Form.

For Subscription Term licenses, except as otherwise provided: (a) the subscription fees set forth in each Order Form hereunder shall be fixed during the Subscription Term, of such Order Form, and (b) the Subscription Term and services fees set forth in each Order Form hereunder will be invoiced upon execution of such Order Form.

For Unit based licenses, except as otherwise provided, Unit fees will be invoiced on execution of an Order Form.

Except as otherwise specified herein, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, payment terms are quoted from the date of invoice and fees paid are

non-refundable. Any payment not received from You by the due date may accrue, at Our discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; from the date such payment was due until the date paid. You shall reimburse Us for all reasonable, actual costs (including reasonable attorneys' fees) incurred by Us in the collection of overdue amounts.

- 4.3. **Taxes.** If We have the legal obligation to pay or collect taxes for which You are responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties that are levied or imposed by reason of Our performance under this Agreement, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 4.4. **Suspension of Services.** If any amount owed by You is thirty (30) days or more overdue, We may, with seven (7) days' prior notice to You, without limiting Our other rights and remedies, suspend Hosted Services and access to Data until such amounts are paid in full. We shall not exercise Our rights under this Section 4.4 if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute. The parties shall work together expeditiously and in good faith to resolve all fee disputes.

5. **Intellectual Property Rights.**

- 5.1. **General.** All right, title, and interest in and to the Hosted Services, Aggregate Data, Our Confidential Information, Data and Documentation, including, without limitation, all modifications, enhancements, derivative works and intellectual property rights thereto shall belong solely to Us and/or Our applicable suppliers.
- 5.2. **Ownership of Your Content and Improving the Service.** Your content is deemed Confidential Information under this Agreement. You exclusively own all right, title and interest in and to your content. In the event of termination or expiration of this Agreement or any applicable Order Form, and if legally permissible and requested by You within thirty (30) days of such termination or expiration, We will (a) return to You your content or (b) destroy or permanently erase your content ending all of Our obligations. We may use your content to access, use, reproduce and prepare derivative works based on your content *solely* for the purpose of providing the Services hereunder and to improve or enhance new products and the Services. This includes use of your content to compile, and utilize anonymized Aggregate Data as part of process to improve or enhance the Service. You agree to have obtained all necessary third party consents and made all required disclosures necessary to use the Services.
- 5.3. **Our Broad Use of Your Suggestions.** We shall have a royalty-free, broadly construed perpetual license to use or incorporate into the Hosted Services any suggestions, enhancement requests, recommendations or other feedback provided by You.

6. **Confidentiality.**

- 6.1. **Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally 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, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms and Statements of Work hereunder), Aggregate Data the Hosted Services, business and marketing plans, technology, financial and technical information, product designs, and business processes. Confidential Information (except for your content) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 6.2. **Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.
- 6.3. **Protection.** Each party shall protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). We shall notify You promptly in the event a security breach related to your content.
- 6.4. **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 6.5. **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. **Representations and Warranties.**

- 7.1. **Mutual Warranties.** Each party represents and warrants that (a) it has the legal power to enter into this Agreement, and (b) it will not transmit to the other party any Malicious Code.

7.2. **Our Warranty.** We warrant during the Subscription Term (or if licensed on a Unit basis, until the number of licensed Units are consumed) that the Hosted Services will be free of material defects and will function in substantial conformance to Our Documentation. To the extent permitted by applicable law, THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND WE DISCLAIM ANY AND ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT WE KNOW, HAVE REASON TO KNOW, HAVE BEEN ADVISED, OR ARE OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE FURTHER DISCLAIM ANY AND ALL WARRANTIES, CONDITIONS, AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT. THE DATA IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. No action for breach of the limited warranty set forth in this [Section 7.2](#) may be commenced more than one (1) year following either (i) the expiration of the applicable Subscription Term or (ii) the date the last licensed Unit is consumed, as applicable.

8. **Damages and Limitation of Liability.**

8.1. **Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE HOSTED SERVICES, OR THE DATA. EVEN IF EITHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. **Limitation of Liability.** EXCLUDING CONFIDENTIALITY (SECTION 6) AND INDEMNIFICATION (SECTION 9), IN ALL EVENTS, OUR AGGREGATE LIABILITY TO YOU FOR CLAIMS RELATING TO THIS AGREEMENT OR THE HOSTED SERVICES, WHETHER FOR BREACH OF CONTRACT OR IN TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE GREATER OF A) THE AMOUNT ACTUALLY PAID BY YOU TO US HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY BEFORE THE CLAIM WHICH GAVE RISE TO THE LIABILITY OR B) THE ANNUALIZED SUBSCRIPTION VALUE AT THE TIME OF SUCH CLAIM. THE LIMITATIONS SET FORTH IN THIS SECTION 8 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. **Mutual Indemnification.**

9.1. **Indemnification by Us.** (a) Subject to this Agreement, We shall defend, indemnify and hold You harmless against any loss, damage, fines, statutory penalties, or

costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against You by a third party alleging unauthorized disclosure of Personal Information, or that the use of the Hosted Services as contemplated hereunder infringes the intellectual property rights of a third party; provided, that You (i) promptly give written notice of the Claim to Us, (ii) give Us sole control of the defense and settlement of the Claim (provided that We may not settle or defend any Claim unless We unconditionally release You of all liability), and (iii) provide to Us, at Our cost, all reasonable assistance. (b) In the event We are required to indemnify you in accordance with this Section 9.1, or if We reasonably believe the Hosted Services or Data may infringe a third party's intellectual property rights or unauthorized disclosure of a third party's Personal Information, then We may at Our sole option and expense (i) modify the Hosted Services so that it no longer infringes without materially adversely affecting its operation, or materially altering its capacity or performance, (ii) obtain a license for Your continued use of the Hosted Services, and/or (iii) remove the infringing component from the Hosted Services without materially adversely affecting its operation, or materially altering its capacity or performance. If, despite Our commercially reasonable efforts to do so, the foregoing options are not reasonably practicable, then this Agreement may be terminated at Our option, in which case We shall issue to You a refund of any and all prepaid fees covering the remainder of the then-current Subscription Term(s), or remaining unconsumed licensed Units as applicable, from the point in time when You were unable to make use of the Hosted Service or Data due to the third party infringement claim or unauthorized disclosure of a third party's Personal information. (c) Furthermore, We shall have no liability for any Claim under Section 9.1 to the extent such liability is the result of (i) modifications to the Hosted Service by anyone other than Us or Our agents (provided that We shall not be liable if We or Our agents made the modifications using requirements, documents, written specifications or other written materials submitted by You or Your agents or representatives), (ii) the use or combination of the Hosted Service with any other item not provided by Us where in the absence of such use or combination, the Hosted Service alone would not have given rise to the Claim, or (iii) Your continued use of an infringing version of the Hosted Service when the then current version of the Hosted Service has been modified to be non-infringing.

9.2. **Indemnification by You.** Subject to this Agreement, You shall defend, indemnify and hold Us harmless against any loss, damage fines, statutory penalties, or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party alleging unauthorized disclosure of Personal Information by You while using the Hosted Services or that your content, or Your use of the Hosted Services in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that We (a) promptly give written notice of the Claim to You, (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle or defend

any Claim unless it unconditionally releases Us of all liability), and (c) provide to You, at Your cost, all reasonable assistance.

9.3. **Exclusive Remedy.** This "Mutual Indemnification" Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this Section 9.

10. **Access and Monitoring.** We may access Your account and your content as necessary to identify or resolve technical problems or respond to complaints about the Hosted Services. Without limiting the foregoing and with two (2) days prior written notice, We shall have the right to remove any material submitted to the Hosted Services that We find to be in violation of the provisions hereof.

11. **Term and Termination.**

11.1. **Term of Agreement.** The term of this Agreement commences on the Effective Date and continues until all Subscription Terms expire, Units licensed are consumed or the Agreement is otherwise terminated.

11.2. **Subscription Term and Renewal.** When Hosted Services are licensed on a Subscription Term basis, You may use and access the Hosted Services and Data during the Subscription Term. Subscription Terms shall automatically renew for additional periods of one (1) year unless either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the relevant Subscription Term. In the case of Customer, notice of non-renewal shall be delivered to our CEO at the address specified first above.

11.3. **Termination.** A party may terminate this Agreement for cause (a) upon thirty (30) days prior written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such period, (b) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding, or (c) as otherwise provided herein.

11.4. **Effects of Termination.** Upon any expiration or termination of this Agreement, and upon expiration of the Subscription Term if You do not renew in accordance with Section 11.2, the rights and licenses granted hereunder will automatically terminate, and You may not continue to use the Hosted Services. If the Agreement is terminated based upon Our uncured material breach, We shall refund to You any prepaid fees covering the remainder of Your Subscription Term after the date of such termination, or for any unconsumed Units as of the termination date, as applicable. If the Agreement is terminated based on Your uncured material breach, You shall pay any unpaid fees covering any unconsumed Units, or the remainder of the Subscription Term(s) of all Order Forms after the effective date of such termination, as applicable. Termination of this Agreement shall not limit the parties from pursuing any other remedies available to it, including injunctive relief.

12. **Miscellaneous.**

12.1. **General.** This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it. The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchisor-franchisee relationship is intended or created by this Agreement. Headings in this Agreement are for the convenience of the parties only. Accordingly, they shall not constitute a part of this Agreement when interpreting or enforcing this Agreement.

12.2. **Severability.** If any portion hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

12.3. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms and Statements of Work), without consent of the other party, but with written notice only, to its Affiliates or in connection with a change in Control, merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.4. **Entire Agreement; Breach and Waiver; Amendment.** This Agreement, including all exhibits and addenda hereto and Statements of Work and Order Forms constitute the complete and exclusive understanding and agreement between the parties regarding their subject matter and supersede all prior or contemporaneous agreements or understandings, written or oral, relating to their subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in a formal writing (not email) and signed by duly authorized representatives of the party against whom the waiver, modification or amendment is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form or any Statement of Work, the terms of such exhibit, addendum, Statement of Work or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or in any other ordering documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms shall be null and void. No waiver of any breach of this Agreement shall constitute a waiver of a subsequent breach, whether or not of the same nature. All waivers shall be strictly construed. No delay in enforcing any right or remedy as a result of a breach of this Agreement shall constitute a waiver thereof. Accordingly, no course of conduct shall constitute an amendment or modification of this Agreement.

12.5. **Force Majeure.** Subject to the further provisions of this section, any delays or failures by either party

hereto in the performance of the obligations hereunder shall be excused if and to the extent such delays or failures are caused by occurrences beyond such party's reasonable control, including, without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, and/or any other cause or causes, whether similar or dissimilar to those herein specified, which cannot reasonably be controlled by such party. The period of excused performance pursuant to the foregoing shall be (and only shall be) the actual period during which such an occurrence continues. Accordingly, neither party hereto shall have the right to terminate this Agreement for cause on account of a failure of the other party timely to perform its obligations hereunder during the period of such excused performance pursuant to the foregoing.

12.6. **Federal Government End Use Provisions.** We provide the Hosted Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Hosted Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation).

12.7. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, as if performed wholly within the state and without giving effect to the principles of conflict of law. Any legal actions or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Santa Clara County, California and the parties hereby consent to personal jurisdiction and venue therein.

12.8. **Your Reference and Case Study.** Either party may, with attribution provided, include the other's name and logo in customer or vendor lists including those customer or vendor lists used in press releases. Our pricing is based on this right.

12.9. **Survival.** The parties' rights and obligations under Sections 4 (Fees), 5 (Intellectual Property Rights), 6 (Confidentiality), 8 (Damages and Limitation of Liability), 9 (Mutual Indemnification), 11 (Term and Termination) and 12 (Miscellaneous) shall survive the termination of this Agreement for any reason.

12.10. **Notices.** All notices required or contemplated by this Agreement shall be in writing and as addressed as first stated above. Any notice to be given or served hereunder by either party shall be deemed given and received hereunder when delivered personally, emailed, sent by nationally recognized overnight delivery service, or three (3) days after being mailed certified mail, postage prepaid, to You or Us in accordance with this Section.

12.11. **Counterparts and Exchange by Email or Fax.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by email, DocuSign or fax shall be sufficient to bind the parties to the terms and conditions of this Agreement.

12.12. **Data Processing Agreement.** The terms of our data processing agreement at <https://www.aptology.com/legal/> ("DPA") are hereby incorporated by reference and shall apply to the extent Data includes Personal Information.