

PREMIUM SaaS SUBSCRIPTION TERMS AND CONDITIONS

These Premium SaaS terms and conditions ("Conditions") are applicable to all Premium SaaS Subscription previously and subsequently ordered by Customer, are hereby incorporated into the Agreement and govern all use of any Premium SaaS Subscription. These Conditions supersede and replace any other terms and conditions for Licensor's SaaS products and services. In the event of any conflict between these Conditions and the Agreement, these Conditions shall prevail.

1. Definitions

- a. **"Customer Data"** means any data, information or material provided to Licensor or uploaded to the Premium SaaS Subscription by or on behalf of Customer in the course of Customer using the Premium SaaS Subscription, which may or may not include personal data, as applicable.
- b. **"Customer Equipment"** means Customer's or any of Customer's third parties' computer hardware, software and network infrastructure used to access the Premium SaaS Subscription.
- c. **"Customer Error Incident"** means any unavailability of the Premium SaaS Subscription related to Customer's or its third parties' applications, Customer Data or third party data, Customer's Equipment or its third parties' equipment, Customer Customizations (as defined below) or the acts or omissions of any User of the Premium SaaS Subscription that cause a disruption or error in such Premium SaaS Subscription.
- d. **"Internet Disruptions"** means an action or inactions of an internet service provider that produces situations in which Customer's connections to the internet may be impaired or disrupted, which may affect Customer's access to the Premium SaaS Subscription or Software.
- e. **"Login"** means the username and password assigned by Customer for each User.
- f. **"Malicious Code"** means any back door, drop dead device, time bomb, Trojan horse, virus, worm, spyware or adware (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing or facilitating, any of the following functions: disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed.
- g. **"Premium SaaS Subscription"** means the hosted, on-demand or web-based services offered by Licensor as described in the Service Description and set forth in an Order Form.
- h. **"Service Description"** means the description of the Premium SaaS Subscription set out above, which is incorporated into an Order Form by reference and forms part of the Agreement.
- i. **"Subscription Term"** means the term during which Customer receives the Premium SaaS Subscription.
- j. **"User"** means any individual accessing or using the Premium SaaS Subscription for or on behalf of Customer.

2. Premium SaaS Subscription

- a. Licensor shall provide Customer with use of the Premium SaaS Subscription, which may include a browser interface and encrypted Login (when required) and transmission of, access to and storage of Customer Data. Customer shall use the Premium SaaS Subscription in accordance with these Conditions and Licensor's SaaS operational policies notified to Customer from time to time. Customer's access to the Premium SaaS Subscription shall be via one of the methods set out in the Service Description or as notified by Licensor from time to time. Licensor may, at its sole discretion, enhance the Premium SaaS Subscription from time to time, at no cost or expense to Customer. Where specified in a Statement of Work for Professional Services, Licensor will configure the Premium SaaS Subscription and any Service Deliverables provided therewith, as applicable.
- b. Subject to Sections 4(c) and 4(d) below, Customer is permitted to create customized functionality changes for the Premium SaaS Subscription including third party integrations between the Premium SaaS Subscription and a third party application ("**Customer Customizations**") and deploy code changes for such Customer Customizations to the Customer's production environment in accordance with Licensor's SaaS operational policies notified to Customer from time to time. Customer assumes full risk and liability therefor and expressly acknowledges that the Customer Customizations shall not be tested by Licensor.
- c. Licensor shall provide installation of any Maintenance Releases at its sole discretion, as part of the Premium SaaS Subscription, at no extra charge to Customer. The Premium SaaS Subscription shall not include the provision of

maintenance and support for Customer Customizations. If Customer requires support for the Customer Customizations this shall be provided subject to a separate Statement of Work entered into between Licensor and Customer and payment by Customer of additional Professional Services fees.

- d. Each User may be required to have a Login with unique user identification. Licensor reserves the right to require Customer to alter any password or to disable a User account if Licensor believes it is no longer secure. Customer shall not permit more than one User to use each Login to access the Premium SaaS Subscription or otherwise share Login accounts, User identifications or passwords. Customer is liable for all access to the Premium SaaS Subscription and activities conducted by Users accessing the Premium SaaS Subscription using the Logins, including such Users' compliance with the terms of the Agreement.
- e. Licensor will maintain the Premium SaaS Subscription at a reputable third party internet service provider and hosting facility, where it is subject to commercially reasonable security precautions designed to prevent unauthorized access to the Premium SaaS Subscription. Such procedures shall comply with industry standards for the type of information maintained, however, Customer acknowledges that, notwithstanding such security precautions, use of or connection to the internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Premium SaaS Subscription, and Licensor will not be responsible for such acts.

- 3. Restrictions.** Customer shall use the Premium SaaS Subscription solely for Customer's internal business purposes, in compliance with applicable laws, and shall not: (i) make the Premium SaaS Subscription or Software available to any unauthorized third party; (ii) send or store infringing, unlawful, defamatory or libelous material or software; (iii) deploy, upload or store any Malicious Code, file or application; (iv) access the Premium SaaS Subscription by any means other than the Login or otherwise attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Premium SaaS Subscription or the data contained therein; (v) modify, copy or create derivative works based on the Premium SaaS Subscription other than the Customer Customizations; (vi) reverse engineer the Premium SaaS Subscription or Software; (vii) access the Premium SaaS Subscription or Software for the purpose of building, selling, marketing or otherwise, a competitive product or service or copying the Software or SaaS Subscription's features or user interface; (viii) remove the copyright, trademark, or any other proprietary rights or notices included within the Premium SaaS Subscription or Software and on and in any Documentation; or (iv) use or upload any open-source software in conjunction with the Premium SaaS Subscription and Licensor reserves the right to remove any such open-source software in the event it is used or uploaded. Customer shall not make any attempt to create additional User accounts, including elevated rights User accounts, without Licensor's express permission or to overwhelm the server resources of the Premium SaaS Subscription or otherwise induce a denial-of-service attack on the Premium SaaS Subscription through some combination of search requests. If Customer engages in activity that is not a legitimate use of the Premium SaaS Subscription, such as security penetration tests, stress tests, spamming activity, or other activity for which the Premium SaaS Subscription is not intended, such use will be considered a material breach of the Agreement and Licensor may suspend Customer's access to the Premium SaaS Subscription until such activity ceases, with such interruption not being counted against the below Service Availability.

4. Customer Responsibilities.

- a. Customer agrees to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Premium SaaS Subscription and creation of any Customer Customizations, including those laws related to data privacy, security, international communications and the transmission of technical or personal data. Customer shall: (i) notify Licensor immediately of any unauthorized use of any Login or any other known or suspected breach of security; (ii) report to Licensor immediately and use reasonable efforts to stop immediately any copying, extraction or distribution of content that is known or suspected by Customer to be infringing or unlawful; and (iii) not impersonate another Licensor customer or provide false identity information to gain access to or use the Premium SaaS Subscription.
- b. Customer shall be responsible for any costs in connection with establishment and maintenance of internet connectivity to the Premium SaaS Subscription, including, without limitation, telephone communications, internet service provider costs, computer hardware, fees charged by third parties, insurance, internet access software, or any other costs incurred by Customer in accessing the Premium SaaS Subscription.
- c. Customer acknowledges that the Premium SaaS Subscription provides enhanced rights of access and use to Users as set out in the Service Description and these Conditions. Consequently, Customer expressly agrees that:
 - i. it bears the sole risk and liability for Customer's and Users (including third parties' engaged by Customer) use of the Premium SaaS Subscription and creation of any Customer Customizations. Notwithstanding Licensor's obligation to provide appropriate technical and organizational security measures for the Premium SaaS Subscription, Licensor shall have no liability whatsoever for the Customer Customizations or for Customer's or its Users' use of the Premium SaaS Subscription, including without limitation any liability for any bugs, errors, defects, performance issues, data corruption or security vulnerabilities in the Customer Customizations or caused to the Software or Premium SaaS Subscription as a result of such Customer Customizations or Customer's

or any Users' use of the Premium SaaS Subscription or its or their acts or omissions. Licensor makes no representations or warranties whatsoever regarding the Customer Customizations, including the security, compliance, or performance of any Customer Customizations created by the Customer or any third parties on Customer's behalf.

- ii. it will implement and maintain appropriate administrative, technical and organizational security measures to ensure the security of its access credentials, the development environment provided by Licensor, Customer's own software, hardware, systems and architecture and the Customer Data within the Premium SaaS Subscription and any Customer Customizations, and to prevent any misuse or accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access. At a minimum, such measures shall include those identified in the Apteon Premium SaaS Security Standards;
 - iii. Where the Service Description permits and Licensor approves in writing for Customer to use third party software, services or components with the Premium SaaS Subscription or to build integrations with such third party software, Licensor shall not be responsible for any such third-party software, services or components used by Customer and Users or any integrations built in relation thereto. Customer assumes all risks associated with the use of such third-party software and services and integrations and is responsible for obtaining and maintaining any necessary licenses, permissions and consents in respect of the same.
- d. Customer agrees to indemnify, defend, and hold harmless Licensor from and against any claims made against Licensor, Licensor's affiliates, executives, employees, consultants and assigns ("Licensor Indemnitees") and any damages, liabilities, costs, and expenses (including reasonable legal fees) incurred by the Licensor Indemnitees and arising out of or related to Customer's or its third parties' acts and omissions in relation to use of the Premium SaaS Subscription.
 - e. Customer will cooperate with the Licensor, at Licensor's request, in any security investigations or incident response activities with respect to the Premium SaaS Subscription.

5. Service Availability.

- a. Subject to Section 5(b) below, Licensor shall make reasonable efforts to provide production environment service availability of 99.9% measured on a quarterly basis ("**Service Availability**") not including (i) Customer Error Incidents, (ii) Force Majeure and (iii) Internet Disruptions. In order to enable Licensor to troubleshoot problems as necessary, Licensor uses an administrator account on each Customer environment and may utilize manual testing to confirm such failure. An interruption in the Premium SaaS Subscription shall not be considered a breach of Licensor's obligations hereunder if: (i) Licensor promptly takes all reasonable steps to restore the Premium SaaS Subscription; or (ii) the interruption in Premium SaaS Subscription resulted from a Customer Error Incident, a Force Majeure, regularly scheduled or emergency maintenance, or due to an Internet Disruption.
- b. Customer expressly agrees to make available, upon Licensor's request, accurate and comprehensive information to enable Licensor to determine the cause of any unavailability of the Premium SaaS Subscription, including without limitation, providing Licensor with full and necessary access to Customer's systems and processes and any relevant third party systems and processes to enable Licensor to make such determination. Failure by Customer to provide sufficient information and/or access to Licensor for Licensor to conclusively establish the cause of any interruption in Service Availability (and particularly the extent to which any interruption is caused by Customer Error Incidents) shall negate any and all obligations of the Licensor pursuant to section 5(a) above.

6. Customer Data.

- a. Licensor does not own any Customer Data. Customer, not Licensor, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Customer Data, and Licensor shall not be responsible or liable for: (i) damages resulting from Licensor's reliance on such Customer Data and/or (ii) the deletion, correction, destruction, damage, or loss of any Customer Data that result from Customer's actions and omissions or any Customer Customizations. Licensor is not responsible for restoring lost Customer Data or damage to Customer's data that results from Customer's actions. Customer hereby grants to Licensor a non-exclusive, fully-paid and royalty-free license to reproduce, distribute, perform, display and otherwise use the Customer Data solely to provide the Premium SaaS Subscription to Customer. Customer represents and warrants that: (i) Customer owns or otherwise has the right to grant the license set forth in this Section 5(a) for the Customer Data, and (ii) the Customer Data does not violate the privacy rights, publicity rights, copyright rights, or other rights of any person or entity. Licensor has the right (but not the obligation) to review any Customer Data and delete any Customer Data that in the sole judgment of Licensor violates the Agreement, is prohibited content, is illegal, violates the rights, harms, or threatens the safety of any User or any other person, or creates liability for Licensor, its suppliers, or any User. Licensor reserves the right (but has no obligation) to investigate and take action in its sole discretion against Customer if Customer violates

this provision or any other provision of the Agreement, including without limitation, removing Customer Data from the Premium SaaS Subscription, suspending Customer's access to the Premium SaaS Subscription, terminating the Agreement, reporting Customer to law enforcement authorities, and taking legal action against Customer.

- b. Licensor will maintain the Customer Data on server(s) at Licensor's designated site and provide backups to Customer Data in accordance with Licensor's then-current data backup policies. Licensor will use commercially reasonable efforts to perform restorations to the Premium SaaS Subscription in the event of a service failure. Subject to applicable law, Licensor reserves the right to withhold Customer Data without notice for any breach, including, without limitation, Customer's non-payment.

7. Payment.

- a. In addition to any other rights granted to Licensor herein, Licensor reserves the right to suspend Customer's access to the Premium SaaS Subscription, without prior notice, if Customer's account becomes more than thirty (30) days past due. Customer agrees to pay a finance charge equal to the lesser of one and a half percent (1.5%) per month or the maximum rate permitted by law on all past due amounts. Customer shall reimburse Licensor for any of Licensor's reasonable costs of collecting past due amounts. Customer will continue to be charged for Users during any period of suspension. If Customer or Licensor initiates termination of the Agreement, Customer will be obligated to pay the balance due on Customer's account computed in accordance with the terms set forth herein.
- b. Upon execution of this Agreement, Licensor shall invoice Customer, for the first twelve (12) month period of the term set forth in the Order Form, and then yearly, in advance, for each subsequent twelve (12) month period, unless a different billing frequency is explicitly stated in the applicable Order Form. Customer is responsible for paying all license types that give access to Users, which are ordered for the entire Subscription Term, whether or not such User access is actively used. Customer shall pay for all amounts due and owing for the SaaS Subscription, including committed fees for Premium SaaS Subscription for the Subscription Term or any other fee or charge associated with Customer's use of the Premium SaaS Subscription. Customer may only reduce the number of Users or other license types set forth in the Order Form at the end of the Subscription Term set out in the Order Form.
- c. Licensor reserves the right to impose a service reinstatement fee in the event Customer's access is suspended by Licensor in accordance with the Agreement or these Conditions and thereafter reinstated by Licensor.
- d. Licensor shall have the right, but not the obligation, to verify the number of Users under the Agreement at the end of each month.

- 8. Termination.** Upon termination or expiration of the Subscription Term, Customer may request Customer Data within thirty (30) days of termination and Licensor will make available to Customer an electronic copy of the Customer Data for an additional fee. Subject to applicable law, Licensor will not provide Customer Data unless all amounts due and owing for the Premium SaaS Subscription, including committed Premium SaaS Subscription Fees for each Subscription Term, fees for the Professional Services or any other fee or charge associated with Customer's use of the Premium SaaS Subscription have been paid by Customer. After such 30-day period, except where necessary to comply with applicable laws Licensor shall have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.