



SERVICES AGREEMENT

This Services Agreement is made as of May 5, 2022 (the "**Effective Date**") and shall continue in effect until May 10, 2023 (the "**Expiration Date**"), unless terminated earlier in accordance with the provisions of this agreement, by and between:

Apex Innovations Group, a corporation organized and existing under the laws of the Delaware USA, having its principal offices at 123 Main Street Austin, TX 78701, ("**Apex Innovations**");

and

Potrero Labs, Inc. a corporation organized and existing under the laws of the state of Delaware, having its principal offices at 71 Stevenson Street #600, San Francisco, California 94105, (the "**Customer**");

and sets out the terms and conditions under which Apex Innovations agrees to provide the Customer with the Services and a License (both terms as defined below).

NOW, THE DEFINITIONS, the parties have agreed as follows:

- 1.1 In this Agreement, unless the context otherwise requires or expressly stated otherwise: singular terms include the plural and vice versa; the use of any gender shall be applicable to both genders; the words "include" and "including" will not be construed as terms of limitation; the words "day", "month" and "year" mean respectively, calendar day, calendar month and calendar year. References to any legislation or regulations include references to any amendments or re-enactments thereof from time to time.
- 1.2 When used in this Agreement, the capitalized terms below have the following meanings:
 - "**Agreement**" means this agreement and all Exhibits attached hereto.
 - "**Client Application**" means the part of the Software that is intended for installation on the User's desktop / mobile devices.
 - "**Confidential Information**" means information, in whatever form disclosed, provided by or on behalf of either party ("**Disclosing Party**") to the other party ("**Receiving Party**"), or to which the Receiving Party otherwise gains access, in the course of or incidental to the performance of this Agreement, and that should reasonably be understood by the Receiving Party because of legends or other markings, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the Disclosing Party or a third party. Without derogating from the generality of the above, the Software shall be deemed as Confidential Information of Apex Innovations.
 - "**Content**" means all of Customer's data, information, text, pictures, and any other content that is routed or and/or transmitted through the use of the Software.
 - "**Documentation**" means the documentation which is provided by Apex Innovations as part of the Services, which may include, without limitation, user guides, installation instructions and training materials, but excluding source code.
 - "**Exhibits**" has the meaning specified in Section 15.2 below.

"Intellectual Property" means all intellectual, moral, industrial and/or proprietary property and rights now or hereafter recognized under any applicable law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including, but not limited to (i) all forms of patents and utility models; (ii) inventions, discoveries, (whether patentable or not); (iii) rights associated with works of authorship, including but not limited to copyrights and maskworks; (iv) trademarks and service marks, trade names, domain name registration; (v) designs (whether or not capable of registration), design rights; (vi) database rights; (vii) trade secrets and know how; (viii) all rights to confidential or proprietary information; and with respect to the intellectual property included in paragraphs (i) to and including (viii) above - any rights analogous to those mentioned herein; all derivative works thereof; and any current or future applications, renewals, extensions, restorations, provisionals, continuations, continuations-in-part, divisions, reexaminations and reissues thereof; the right to apply to any of the above; and all of the tangible embodiments thereof.

"Intellectual Property Rights" means all rights, title and interest in and to any Intellectual Property.

"License" has the meaning specified in Section 4.1 below.

"Order(s)" has the meaning specified in Section 3.3 below.

"Services" has the meaning specified in Section 2.1 below.

"Service Fees" has the meaning specified in Section 5.1 below.

"Software" means Apex Innovations's proprietary and generic software (in object code only) and related Documentation (except for source code). "Software" includes the Client Application, but does not include any Content.

"Territory" means the site, country or countries set out in the respective Order.

"User" means an employee or agent of the Customer authorized by the Customer to access or use the Software, or any part or parts thereof.

2. THE SERVICES

2.1 The Customer hereby engages Apex Innovations to provide it with the services set out in Exhibit A hereto (the "**Services**"), and Apex Innovations hereby agrees to provide the Customer with the Services all subject to and in accordance with the terms and conditions set out below.

2.2 The rendering of the Services to the Customer hereunder shall be on a non-exclusive basis, and, subject to the provision of Section 10 below, nothing herein contained shall prevent, nor be deemed as preventing, either party from negotiating and/or entering into agreements with third parties with respect to the subject matter of this Agreement.

3. ORDERING THE SERVICES

3.1 During the term of this Agreement, the Customer may order Services, subject to the terms and conditions as set out in this Agreement.

3.2 The Services shall be provided by Apex Innovations solely in connection with the Software and the authorized use thereof.

3.3 The procurement of the Services hereunder shall be done by the issuance and acceptance of orders ("**Orders**"), substantially in the form attached hereto as Exhibit B. Each Order shall reference this Agreement, shall be deemed to incorporate the terms and conditions of this Agreement, and will be binding on the parties only when signed

by both parties. Each party shall ensure that the Orders made hereunder are signed only by its duly authorized representatives.

Each Order and this Agreement shall constitute the entire agreement between the parties relating to a particular Order. In case of any inconsistency or contradiction between the provisions of this Agreement and the provisions of an Order, the provisions of this Agreement shall prevail as to the subject matter of such inconsistency.

Any preprinted or other terms and conditions of the Customer shall be deemed as void with respect to this Agreement, even if acknowledged in writing by Apex Innovations, and shall not in any way supersede or change the terms and conditions of this Agreement and/or of the relevant Order.

- 3.4 Each party shall designate a contact person to coordinate the activities to be performed under this Agreement and any Order.
- 3.5 The Customer shall provide Apex Innovations with complete, timely and accurate information, data and materials required by Apex Innovations for the performance of Services. The Customer will be responsible for, and assumes the risk of, any problems resulting from the content, accuracy, completeness and consistency of all such information, data and materials supplied by the Customer.

4. GRANT OF LICENSE

- 4.1 Subject to the terms of this Agreement and payment by the Customer of all relevant fees, Apex Innovations hereby grants to Customer a personal, non-exclusive, revocable, non-transferable, and non-sublicensable, limited license, to use the Software by (i) installing and using the Client Application, and (ii) routing and/or transmitting Content through use of the Software; all solely by Users and for Customer's own internal business operations within the Territory, for the volumes licensed, all as set out in the relevant Order (the "**License**").

4.2 Customer shall not –

- (a) Except as and only to the extent any of the following restrictions are specifically prohibited by applicable law or to the extent as may be specifically permitted by the licensing terms governing use of any open sourced components included with the Software - modify, adapt, translate, decompile, disassemble or reverse engineer the Software, or in any other manner decode the Software or create derivative works based on the Software;
- (b) Make copies of the Software or any part thereof;
- (c) Provide or allow access to the Software to any third party, loan, rent, lease, sub-license, resell, distribute or otherwise transfer the Software to any third party, use the Software for a commercial timesharing, service bureau, or outsourcing arrangement, or to otherwise utilize the Software in any manner not expressly allowed under this Agreement. Customer shall notify Apex Innovations promptly and in writing, if Customer becomes aware of any unauthorized third party access to, or use of, the Software;
- (d) Create any unauthorized Internet "links" to the Software or the Services, or "frame" or "mirror" any content of the Software or Services on any other server or wireless or Internet-based device;
- (e) Copy any ideas, features, functions or graphics of the Software or Services; or
- (f) Remove or alter any patent numbers, trade names, copyright notices, trademark notices, serial numbers, labels, tags or other identifying marks, symbols or legends included in and/or otherwise affixed to the Software.

5. FEES, TERMS OF PAYMENT AND TAXES

- 5.1 (a) In consideration for providing the Services and granting the License, the Customer shall pay Apex Innovations the amounts set forth in Exhibit B hereto (the "**Service Fees**"). If there are any conflicting terms between Exhibit B and the Agreement, the terms of Exhibit B will prevail.
- (b) All charges set forth in this Agreement and/or any Order are fixed for twelve (12) months commencing on the Effective Date. Apex Innovations shall be entitled, upon sending the Customer a ninety (90) days' prior written notice not more than once in each such twelve (12) months period during the term of this Agreement, to increase such rates by the percentage change (related to the twelve month period preceding such increase).

5.2 All fees shall be quoted and paid for in U.S. Dollars.

5.3 Payment Terms: All fees shall be paid within net thirty (30) days from the receipt of invoice.

Contract Value: The customer shall pay the total contract value of \$450,000 to the provider.

Customer shall not be entitled to withhold or delay any payment due to Apex Innovations hereunder, and shall not set off or deduct therefrom any amounts whatsoever.

In the event of late payment, Apex Innovations may assess interest on overdue payments at the rate of one and one half percent (1.5%) per month, or the maximum lesser rate allowed by law, from the due date for payment until payment is received by Apex Innovations (whether before or after judgment), accruing on a daily basis and compounding monthly, without thereby derogating from other rights and remedies afforded to Perimeter 81 under this Agreement and/or under any applicable law.

5.4 Notwithstanding the provisions of Section 11.3 below, Customer's failure to pay, for any reason, undisputed amounts within thirty (30) days from the due date for payment, shall constitute a material breach of this Agreement and of the respective Order by Customer, entitling Apex Innovations to forthwith terminate this Agreement and the respective Order, and without thereby derogating from other rights and remedies afforded to Perimeter 81 under this Agreement and/or under any applicable law.

All fees due to Apex Innovations hereunder are net and are exclusive of all current and future taxes, including without limitation, sales, use, value-added, withholding or other taxes, customs duties or levies on transactions made under this Agreement. If any taxes (except for corporate taxes imposed upon Apex Innovations's net income), are found to be applicable, the appropriate amount of tax shall be invoiced to and paid by Customer.

6. **CONTENT**

6.1 Apex Innovations has no visibility to the Content transmitted by the Customer through the Services. Therefore, Apex Innovations will make no effort to validate any of the Content for correctness or usability.

6.3 In addition, the Customer hereby represents and warrants that: (a) its use of the Services shall at all times comply with the terms of this Agreement; (b) during the term of this Agreement, and at all times during its use of the Services, Customer shall comply with all applicable laws, rules and regulations; and (c) it shall not use the facilities or capabilities of the Services to conduct any illegal activity, solicit the performance of any illegal activity, or engage in any other activity which infringes upon the rights of Apex Innovations or any third party. If Customer breaches any of the warranties contained in this Section 6.3, Apex Innovations may, in addition to any other rights it may have in law or equity, exercise its right to terminate this Agreement in accordance with the provisions of Section 11.3 below.

7. **REPRESENTATIONS AND WARRANTIES**

7.1 Each party hereby represents and warrants that:

- (a) It has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
- (b) Its signing of, and agreement, to this Agreement have been duly authorized by all requisite corporate actions;
- (c) This Agreement is a valid and legally binding obligation thereon, enforceable against it in accordance with its terms; and
- (d) Nothing contained in this Agreement nor the performance thereof shall place the relevant party in breach or default of any obligation or other agreement, law or regulation by which it is bound or to which it is subject, or requires the consent of any person or entity.

7.2 In addition, Customer hereby represents and warrants that it is the ultimate end user of the Services provided hereunder, and that it is aware that the Services are supplied thereto by Apex Innovations solely for Customer's use for its own internal business operations within the Territory. The above shall not derogate from the provisions of the License.

7.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND Apex Innovations HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SITE, THE SERVICE AND/OR THE FEATURES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, USEFULNESS, SECURITY, RELIABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, .

IN ADDITION, Apex Innovations Expressly DISCLAIMS ANY IMPLIED WARRANTY WITH RESPECT TO LIABILITY FOR COMPLIANCE WITH LAWS, REGULATIONS, OR OTHER OFFICIAL GOVERNMENT RELEASES APPLICABLE TO THE CUSTOMER, WHICH SHALL BE THE SOLE RESPONSIBILITY OF THE CUSTOMER.

CUSTOMER Expressly AGREES THAT Apex Innovations DOES NOT REPRESENT OR WARRANT THAT (I) THE OPERATION OF THE SOFTWARE WILL BE ACCURATE, UNINTERRUPTED OR ERROR-FREE OR THAT THE CLIENT APPLICATION WILL

OPERATE ON COMPUTER AND/OR DEVICES OTHER THAN THOSE SPECIFIED BY Apex Innovations OR (II) THAT THE SERVICES WILL BE FREE FROM DATA CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION AND/OR THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

Apex Innovations MAKES NO GUARANTY OF CONFIDENTIALITY OR PRIVACY OF ANY COMMUNICATION OR INFORMATION TRANSMITTED THROUGH THE USE OF THE SERVICES.

No advice or information, whether oral or written, obtained by Customer from Apex Innovations shall create any warranty, representation or guarantee not expressly stated in this Agreement.

8. LIMITATION OF LIABILITY

8.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL Apex Innovations BE LIABLE FOR (I) ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, (II) ANY DAMAGES RESULTING FROM LOSS OF OR DAMAGE TO DATA, LOSS OF REVENUES, LOSS OF PROFITS, LOSS OF GOODWILL OR LOSS OF USE, AND/OR (III) ANY THIRD PARTY CLAIMS AGAINST CUSTOMER; IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR TO ANY ORDER, YOUR ACCESS TO OR USE, INABILITY TO USE, OR RELIANCE ON THE SERVICES, REGARDLESS OF THE BASIS FOR LIABILITY OF ANY CLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE), EVEN IF INFORMED OF SUCH DAMAGES.

8.2 Apex Innovations'S MAXIMUM CUMULATIVE LIABILITY UNDER THIS AGREEMENT AND/OR ANY ORDER, INCLUDING LIABILITY ARISING OUT OF SERVICES PERFORMED, WILL BE LIMITED TO THE LOWER OF (I) THE DIRECT DAMAGES ACTUALLY INCURRED BY THE CUSTOMER AS A RESULT OF THE EVENT GIVING RISE TO LIABILITY, AND (II) THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER TO Apex Innovations UNDER THE SPECIFIC ORDER FROM WHICH THE CLAIM ARISES, DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE EVENT GIVING RISE TO LIABILITY OCCURRED, LESS AMOUNTS ALREADY PAID BY Apex Innovations UNDER THE SAME ORDER FOR ANY PREVIOUS LIABILITIES. Apex Innovations DOES NOT, AND CANNOT, CONTROL THE FLOW OF DATA TO OR FROM CUSTOMER'S INTERNET HOSTS AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS CAUSED BY THESE THIRD PARTIES CAN PRODUCE SITUATIONS DURING WHICH CUSTOMER'S CONNECTION TO THE INTERNET (OR PORTIONS THEREOF) MAY BE IMPAIRED OR DISRUPTED.

8.3 ACCORDINGLY, Apex Innovations DOES NOT GUARANTEE THAT SUCH DISRUPTIONS OR IMPAIRMENTS WILL NOT OCCUR, AND DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

8.4 No action may be brought against Apex Innovations arising from or in connection with this Agreement and/or any Order later than one (1) year from the expiration or termination for any reason of this Agreement or of the respective Order (the earlier of the two). The above limitations of liability shall also apply to the benefit of Apex Innovations's directors, officers, employees and agents, and Apex Innovations's Affiliates and their respective directors, officers, employees and agents.

9. OWNERSHIP

- 9.1 All right, title, and interest in and to the Software (including, without limitation, the source code thereof), the Services and the Documentation, including (but not limited to) all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of Apex Innovations. Customer is granted no title or ownership rights in or to the Software.

Without derogating from the above, Apex Innovations, reserves all proprietary rights in and to (i) all designs, engineering details and other data pertaining to the Software, (ii) all original works, computer programs, discoveries, inventions, patents, know-how, and techniques arising out of, and/or products developed as a result of, the Services.

The Software contains trade secrets of Apex Innovations, including, without limitation, the source code version and the specific design of the Software.

The Customer may use the Software only in accordance with and subject to the terms and conditions of Section 4 above. All rights not expressly granted to Customer in this Agreement are retained by Apex Innovations.

- 9.2 Customer shall be responsible for ensuring that any Users accessing the Software, shall use the Software strictly in accordance with this Agreement. Any use of the Software by a User contrary to the provisions of this Agreement, shall be deemed as a material breach by Customer of this Agreement.

In addition, during the term of this Agreement, Customer shall maintain and shall procure that the Users accessing the Software shall comply with appropriate security measures and access procedures, in order to ensure that the access to the Software are accessed only by the Users and that Apex Innovations's Intellectual Property Rights and other rights under his Agreement are not compromised in any way.

- 9.3
- 9.4 Customer shall not adopt, use or register any trade names or symbols that are identical, or confusingly similar, to any trademarks or trade names used by Apex Innovations.

Customer shall promptly notify Apex Innovations in writing of any infringement or other violation of Apex Innovations's Intellectual Property Rights to which Customer becomes aware.

Apex Innovations shall have the sole and exclusive right to protect and defend Apex Innovations's Intellectual Property Rights, at its sole cost and expense. **CONFIDENTIAL** Customer shall reasonably cooperate with Apex Innovations, at Apex Innovations's expense, in the defense and protection of such Intellectual Property Rights.

- 10.1 The Receiving Party agrees to hold in confidence the Confidential Information of the Disclosing Party, and to refrain from copying, distributing, disseminating or otherwise disclosing such Confidential Information to anyone, other than to those of its employees, if and to the extent that such employees have a need to know such Confidential Information for the purpose of Receiving Party's performance of this Agreement, and provided that such employees are bound by written agreement to abide by all the obligations concerning such Confidential Information contained in this Agreement.
- 10.2 The Receiving Party undertakes not to use the Confidential Information of the Disclosing Party for any purposes other than for the purposes of performing this Agreement, and not to sell, grant, make available to, or otherwise allow the use of the Disclosing Party's Confidential Information by any third party, directly or indirectly, except as expressly permitted herein.

Without derogating from the generality of the above, Customer undertakes not to use, directly or indirectly, the Confidential Information of Apex Innovations in the development

and/or sale of products having the same or similar functions as the Software, for itself or for a third party.

- 10.3 The Receiving Party shall promptly notify the Disclosing Party in writing of any actual or suspected loss or unauthorized use, disclosure, or access of the Disclosing Party's Confidential Information of which it becomes aware, and take all steps reasonably requested by the Disclosing Party to limit, stop, or otherwise prevent such loss or unauthorized use, disclosure, or access.
- 10.4 All Confidential Information shall be and remain the property of the Disclosing Party. Disclosure of the Disclosing Party's Confidential Information to the Receiving Party shall not be construed as granting the Receiving Party any right, title, or license, whether express or implied, with respect to the Confidential Information or to its related Intellectual Property or products (including, but not limited to, improvements, modifications and/or derivatives related to the Confidential Information), other than the right to use the Confidential Information strictly in accordance with the provisions of this Agreement and the relevant Order. The right to file property rights based on the Confidential Information shall be reserved to the Disclosing Party. The Receiving Party shall not assert a right based on prior use, or assert an objection of public prior use, against property rights based on Confidential Information received under this Agreement.
- 10.5 Disclosing Party's Confidential Information is provided on an "as is" basis, with no warranty of whatsoever kind. Without derogating from the above, Disclosing Party makes no warranties, whether express or implied, regarding the accuracy and/or completeness of the Confidential Information disclosed to Receiving Party hereunder.
- 10.6 The confidentiality obligations of the Receiving Party regarding the Disclosing Party's Confidential Information shall not apply to Confidential Information which:
- (a) is on the Effective Date, or thereafter becomes part of the public domain in reasonably integrated form without fault on the part of the Receiving Party;
 - (b) is lawfully obtained from a source other than the Disclosing Party, which source is free of any obligation to keep the same confidential;
 - (c) is previously known to the Receiving Party without an obligation to be kept confidential, as can be substantiated by written and dated records;
 - (d) was independently developed by the Receiving Party, without use of the Disclosing Party's Confidential Information, as can be substantiated by written and dated records; or
 - (e) is expressly released in writing from such obligations by the Disclosing Party.
- 10.7 Notwithstanding anything to the contrary herein express or implied, the Receiving Party may disclose Confidential Information of the Disclosing Party required to be disclosed pursuant to law, regulation, judicial or administrative order, or request by a governmental or other entity authorized by law to make such request (including, without limitation, a stock exchange where Receiving Party's stocks are listed for public trading); provided, however, that, to the extent possible, the Receiving Party so required to disclose shall first notify the Disclosing Party in writing to enable it to seek relief from such requirement and render reasonable assistance requested by the Disclosing Party (at the Disclosing Party's expense) in connection therewith, and, provided further, that the disclosure shall be limited to the extent expressly required.
- 10.8 The Receiving Party shall keep the Disclosing Party's Confidential Information confidential and secure and shall use at least the same standard of care to protect the Disclosing Party's Confidential Information as the Receiving Party employs for the protection of its own confidential and proprietary information of a similar nature, but in no event less than a

reasonable standard of care. Without limiting the generality of the above, each Party shall ensure that its employees, who shall have access to the Confidential Information of the Disclosing Party, are bound by written agreement to abide by all the obligations concerning such Confidential Information contained in this Agreement. The provisions of this Section 10 above shall not relieve the Receiving Party from its obligations hereunder, and any breach of this Agreement by Receiving Party's employees (even if not employed by Receiving Party at the time the breach occurred), shall be deemed as a breach of this Agreement by Receiving Party.

- 10.9 Each party acknowledges that its breach of this Section 10 may cause the other party extensive and irreparable harm and damage, and agrees that the other party shall be entitled to injunctive relief to prevent use or disclosure of its Confidential Information not authorized by this Agreement, in addition to any other remedy available to the other party under applicable law.
- 10.10 All copies of Confidential Information, regardless of form, shall, at the discretion of the Disclosing Party, either be destroyed or returned to the Disclosing Party, promptly upon the earlier of: (i) Disclosing Party's written request, or (ii) expiration or termination for any reason of this Agreement or the applicable Order (to the extent related to the Confidential Information), and in any of such events shall not thereafter be retained in any form by the Receiving Party. The Receiving Party shall confirm such destruction or return in writing to the Disclosing Party.
- 10.11 Neither party shall disclose, advertise, or publish the terms and conditions of this Agreement (or any summary of any of the forgoing) to any third party without the prior written consent of the other party, unless and to the extent required to do so by law or in order to establish or enforce such party's rights hereunder. Any press release, publication, advertisement or public disclosure regarding this Agreement is subject to both the prior review and the written approval of both parties.

11. TERM AND TERMINATION

- 11.1 This Agreement shall be effective fromThis agreement shall automatically renew annually for successive renewal terms of one (1) year, unless either party gives written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.
- 11.2 Either party may terminate this Agreement and/or any Order at any time and for any reason (or for no reason), by sending the other party a thirty (30) days prior written notice to that effect.
- 11.3 Either party may terminate this Agreement and/or any Order in the event the other party materially breaches this Agreement, by sending the other party a written notice of the alleged material breach and intention to terminate if the breach is not cured. If the breaching party fails to cure such breach within thirty (30) days of receipt of such notice, the other party may, by written notice, terminate this Agreement.
- 11.4 This Agreement and/or any Order may be terminated by either party on written notice, if the other party becomes insolvent, ceases to do business as a going concern, makes an assignment, composition or arrangement for the benefit of its creditors, or admits in writing its inability to pay debts, or if proceedings are instituted by or against it in bankruptcy under applicable insolvency laws, or for receivership, administration, winding-up or dissolution (other than in the course of a solvent reorganization or restructuring approved by the other party to this Agreement), provided such proceedings are not dismissed within sixty (60) days from the initiation thereof.
- 11.5 Upon expiration or termination for any reason of this Agreement or any Order, the following will apply:
 - (a) The License granted to Customer hereunder shall terminate on the effective date of termination;

- (b) Apex Innovations shall immediately cease performing the Services;
 - (c) Customer shall un-install all the Client Applications installed by the Users on mobile devices and all copies thereof in its possession;
 - (d) Each party shall return to the other party any Confidential Information in tangible form obtained in connection with this Agreement or the terminated Order from the other party, as set out in Section 10.10 above;
 - (e) Expiration or termination for any reason of this Agreement shall not derogate from rights and obligations accrued prior to the effective date of expiration or termination, and shall not relieve Customer from its obligation to pay fees that remain unpaid and shall not limit either party from pursuing other available remedies, provided that Apex Innovations's total liability shall be limited as set out in Section 8 above.
- 11.6 (a) The provisions of Sections 1, 4.2, 5, 6.4, 7, 8, 9, 10, 11.5, 11.6, and Sections 13 through and including 15, shall survive the expiration or termination of this Agreement for any reason.
- (b) Expiration or termination for any reason of this Agreement shall cause the expiration or termination of any outstanding Order, unless otherwise agreed in advance and in writing by the parties.

12. COMPLIANCE WITH LAWS

Apex Innovations and Customer each covenant that in performing this Agreement, they shall comply with all the applicable the provisions of the laws and regulations of the Territory and other countries relevant to each party's performance hereunder. Each party shall indemnify and hold the other party harmless from any and all loss or damage sustained because of the party's non-compliance to any laws or regulations as above.

13. GOVERNING LAW AND JURISDICTION

13.1 The validity, performance, construction and effect of this Agreement shall be governed by the laws of the State of Texas, with without regard to conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

13.2 Any dispute arising out or relating to this Agreement (including, but not limited to, the validity, enforceability, interpretation, performance, breach or termination thereof), shall be referred to the competent courts in Harris County, Texas which shall have exclusive jurisdiction with respect to any such disputes. Both parties hereby submit to the exclusive jurisdiction of the aforementioned courts.

14. NOTICES / LANGUAGE

14.1 All notices required or permitted under this Agreement, shall be in writing, will reference this Agreement and will be delivered by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. All notices will be sent to the parties' respective addresses set forth in the heading of this Agreement. Notice will be effective upon receipt or refusal of delivery. If delivered by certified or registered mail, any such notice will be considered to have been given seven (7) days after it was mailed, as evidenced by the postmark. If delivered by courier or express mail service, any such notice shall be considered to have been given on the delivery date reflected by the courier or express mail service receipt. Each party may change its address for receipt of notice by giving notice of such change to the other party.

14.2 The Documentation and all correspondence, notices and technical documentation exchanged between the parties under and/or in accordance with this Agreement or any Order, and the Services shall be provided in the English language only, unless otherwise agreed by the parties in writing.

15. MISCELLANEOUS

15.1 Headings. The headings of the Sections in this Agreement are for reference only and shall not be considered in the interpretation hereof. All references in this Agreement to Sections and Exhibits shall, unless otherwise provided, refer to Sections and Exhibits attached hereto.

15.2 Entire Agreement. This Agreement, together with all Orders and Exhibits (as defined below), contains the complete agreement between the parties and supersedes any prior understandings, agreements or representations by or among the parties, which relate to the subject matter of this Agreement.

The exhibits, annexes, appendices and schedules attached to this Agreement (collectively, the "**Exhibits**"), form an integral part hereof and are expressly incorporated herein by this reference.

In the event of any inconsistency or contradiction between the provisions of this Agreement and the provisions of an Exhibit, the provisions of this Agreement will prevail with respect to the subject matter of such inconsistency or discrepancy.

15.3 Termination for Cause: Either party may terminate this agreement for cause upon written notice to the other party if the other party is in material breach of this agreement.

15.4 Severability. In the event that any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be construed, limited, modified or deleted, to the extent necessary to eliminate any invalidity or unenforceability, and the remaining provisions of this Agreement remain in full force and effect.

15.5 Waiver. No waiver of any right under this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.

15.6 No Partnership. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency or other similar relationship between Apex Innovations and Customer, nor as granting either party the right, power, or authority (express or implied) to bind or otherwise create any duty or obligation for the other. There shall be no employer-employee relationship between the parties' employees.

15.7 Assignment. Neither party may assign, subcontract or otherwise transfer any of its rights and/or obligations under this Agreement or any Order to any third party without the prior written consent of the other party, and any purported assignment or transfer without the other party's prior written consent shall be null and void.

15.8 Successors and Assigns. Subject to the provisions of Section 15.7 above, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

15.9 Force Majeure. A party hereto shall not be liable for any delay, loss and/or damage resulting from causes beyond the control thereof, including, but not limited to, acts of God, acts of a public enemy, acts of any governmental or quasi-governmental agency or any of their political subdivisions, fire, flood, epidemics, explosion, power or

telecommunications irregularities, quarantine restrictions; strikes or other labor unrest, earthquakes, civil commotion or revolutions, war, terrorist attack, freight embargoes, unusually severe weather conditions, or any other cause that was not reasonably foreseeable by such party on the date of signing of this Agreement or the relevant Order. Notwithstanding the above, the provision of this Section 15.9 shall not apply to Customer's obligation to pay Apex Innovations the amounts due to it under this Agreement and/or any Order.

- 15.10 Remedies. All remedies, either under this Agreement or by law otherwise affording to any party, shall be cumulative and not alternative.
- 15.11 No Third Party Beneficiaries. This Agreement does not create any obligation of a party to any third parties, nor shall it be deemed to create any rights or causes of action on behalf of any third parties.
- 15.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document.

[signature page follows]

EXHIBIT A

THE SERVICES

Apex Innovations as a Service Platform, strives to be a leader in providing innovative solutions that empower businesses and individuals to achieve their full potential..

The Apex Innovations platform is built from 3 parts:

- a. Innovation: We believe that innovation is the key to success in today's rapidly changing world. We are committed to staying ahead of the curve by constantly exploring new ideas and developing cutting-edge solutions that push the boundaries of what's possible.
- b. Customer Focus: Our customers are at the heart of everything we do. We are dedicated to understanding their needs and providing them with personalized solutions that exceed their expectations. We believe that building strong, long-lasting relationships with our customers is the key to our success.
- c. Integrity: We believe in conducting our business with the utmost integrity and honesty. We hold ourselves to the highest standards of ethical behavior, and we are committed to being transparent, fair, and accountable in all our dealings. We believe that trust is the foundation of any successful business, and we work hard to earn and maintain the trust of our customers, partners, and employees