

APICA GENERAL TERMS AND CONDITIONS

DEFINITIONS

"Activation Date" means the date when purchase/subscription under each Order Form commence, as set forth in applicable Order Form.

"Affiliate" means any entity controlling or controlled by or under common control with a Party where control is ownership of more than 50 % of the equity or voting rights of such entity. **"Apica"** means **APICA INC**, its affiliates or entities authorized by Apica to provide Services. **"Apica Content"** means Apica supplied texts, audio, video, graphics and other information and data available by means of the Services and/or Apica's web site. **"Availability"** means that Services shall be considered available so long as the Customer is able to log in to the Apica user interface and see application performance data. **"Committed Fee"** means any and all minimum fees and compensation set forth in Order Form and/or SOW that are committed by the Customer for applicable Term(-s) and that will become payable to Apica regardless of actual use and/or provision and/or, with the exceptions set forth in Section 17, premature termination. **"Confidential Information"** shall have the meaning set forth in Section 14. **"Customer"** means the entity or person that orders/subscribes for Services, Support Packages and/or Professional Services. **"Deliverables"** means all software, documents, reports, summaries, schedules, plans, notes, supporting materials, recommendations, drawings and other similar works of authorship specifically developed for the Customer, whether in hard copy or electronic form, to be provided by Apica to the Customer or prepared by Apica for the Customer as Professional Services pursuant to the terms in the General Terms, Description and any applicable SOW. **"Description"** means description of the Services, usage requirements, Support Packages, Professional Services, and related terms as in effect from time to time, located at www.apicasystem.com/service. **"Documentation"** means any Apica supplied specifications, user guides, manuals and other documentation that explain the installation (if applicable), use and functions of the Services, including but not limited to related system and service documentation, all comments, procedural language, materials useful for understanding and using the Services. **"Effective Date"** means the date when each Order Form and/or SOW comes into effect duly executed by the Parties. **"General Terms"** means Apica's General Terms and Conditions for purchase/subscription and use of Services, and the provision of Support Packages and Professional Services, as in effect from time to time. **"Order Form"** means each document and any amendments and supplements thereto, duly executed by the Parties, that set forth the ordering and purchase/subscription of Services and/or Support Packages and additional terms with reference to and incorporating the Description, Effective Date, Activation Date(-s), term (duration) of subscription/use, price and payment terms and other documents, as executed by the Parties. **"Party"** or **"Parties"** means the Customer and Apica individually or jointly. **"Professional Services"** means the professional services to be provided by Apica pursuant to SOW in accordance with the terms and conditions set forth in Description. The terms set forth in Description and applicable SOW shall apply to Professional Services provided by Apica. **"Service"** or **"Services"** (in singular or plural) means Apica's services and/or products ordered and subscribed by the Customer as specified in Order Form, and any subsequent updates, upgrades, bug fixes, work around, or other services and/or products delivered or made accessible to the Customer by or on behalf of Apica to the Customer in connection with the Services. Apica's Services are listed and described in the Description, as in effect from time to time. **"Service Time"** shall have the meaning set forth in Section 7. **"SOW"** means one or more agreed statement of work, duly executed by the Parties, in accordance with the terms and conditions for Professional Services set forth in Description, pursuant to which Apica shall provide Professional Services to the Customer. **"Support Packages"** means On- and Off-Site Support Packages which consist of the support service(-s) to be provided by Apica in accordance with the terms and conditions set forth in Description, designed to complement standard support services with a higher level of technical expertise based on Customer requirements. **"Term"** means the length of each use/subscription of Services and/or provision of Support Services as set forth in applicable Order Form, as further governed by these General Terms. **"Third Party Materials"** means any third party content and materials. **"Third Party Services"** means any gateways, links or other functionality that may be included in the Services and that allows the Customer to access third party services.

1. SERVICES, SUPPORT PACKAGES, PROFESSIONAL SERVICES

The General Terms apply between Apica and the Customer regarding the provision and use of **Services** and **Support Packages**. The Customer may subscribe for Services and/or Support Package by executing (signing) applicable Order Form(-s), which shall become effective upon Apica's counter-signature (Effective Date). Each Order Form shall by reference incorporate the General Terms and applicable Services and/or Support Packages as listed in the Description. In consideration for fees

and compensation payable by the Customer hereunder, Apica shall provide the Services and/or Support Packages set forth in applicable Order Form(-s). Unless agreed otherwise between the Parties, any conflict between an Order Form and the General Terms and/or Description, the content of the Order Form shall prevail.

Apica shall provide **Professional Services** subject to a SOW. The General Terms apply between Apica and the Customer regarding the provision of Professional Services. The terms set forth in Description and applicable SOW are intended to supplement, not replace, the terms set forth in the General Terms. In the event of a direct conflict between the terms of the General Terms and the terms set forth in Description for Professional Services and applicable SOW, the terms set forth in Description for Professional Services and applicable SOW shall control with regard to the subject matter addressed.

2. FEES, PAYMENT TERMS AND TAXES

The Customer shall pay fees for the Services and/or Support Packages as specified in the Order Form. The Customer shall pay compensation for Professional Services as specified in one or more SOW. All fees are exclusive VAT and payable in the currency set forth in the Order Form/SOW. Fee for Services will be invoiced in advance, and payment terms will be net 30 days from date of invoice. Other fees and compensations for the Support Packages, Professional Services, expenses etc. will be invoiced monthly in arrears, and payment terms will be net 30 days from date of invoice.

The Customer is responsible for all taxes arising out of the Customer's subscription and use of and all deliverables under the Services, including sales, use, business and occupation, gross receipts, and personal property taxes, but excluding taxes based on Apica's income. If Apica is required to pay any taxes allocated to the Customer or related penalties or interest, the Customer shall promptly pay to Apica the amount paid or required to be collected or paid by Apica. The Customer shall provide Apica, upon Apica's request, with a copy of such tax exemption certificate or other evidence satisfactory to Apica demonstrating that the Customer is exempt from state, county, city or other local sales or use taxes. The Customer shall notify Apica in a timely manner of any change in the Customer's sales or use tax status.

3. THE SERVICES (SOFTWARE-AS-A-SERVICE)

Subject to the Customer's payment of applicable fees, Apica grants to the Customer a non-exclusive, non-transferable non-sub-licensable, worldwide, license to access, display and use the Services and Documentation for the Customer's internal use in accordance with applicable Order Form and the General Terms. The Customer acknowledges and agrees that the Services are licensed and subscribed on a Software-as-a-service basis and not sold to the Customer. Apica reserves all rights not expressly granted to the Customer herein.

Apica reserves the right to from time to time make changes and updates to the functionality of the Services, Description and Documentation.

The Customer is only permitted to use the Services unchanged 'as supplied by Apica' and may not decompile, reverse engineer, disassemble or otherwise attempt to derive and/or gain access to source code from any software made available to the Customer as part of the Services. The Customer shall neither use nor permit others to use or access the Services to, (a) build a competitive product or service, (b) make or have made a product using similar ideas, features, functions or graphics of the Services, (c) make derivative works based upon the Services or the Documentation, or (d) copy any features, functions or graphics of the Services or the Documentation.

The Customer acknowledges that some of the Services are designed to deliver a high volume of traffic to designated web sites and the Customer agrees that the Customer is solely responsible for ensuring that designated web sites are capable of accommodating such volumes. The Customer shall neither use nor permit others to use the Services; (a) to direct volume to any website that the Customer does not own or operate, such as a website of a competitor, (b) for any unlawful, invasive, infringing, defamatory, fraudulent, or obscene purpose, (c) to send spam or other types of unsolicited communications of any kind, regardless of the content or nature of the messages, (d) to send any virus, worm, Trojan horse, or harmful code or attachment, or (e) to alter, steal, corrupt, disable, destroy, trespass, or violate any security or encryption of any computer file, database, website, or network. Accounts registered by 'bots' or other automated methods are prohibited.

4. OWNERSHIP

Apica and if applicable, its licensors, retain all rights, title and interest in and to the Services and Documentation (including but not limited to any images, photographs, animations, video, audio, music, text, applets incorporated into the Services, 'apps' 'api:s' and any copies of the

Services and Documentation that the Customer is explicitly permitted to make). No Order Form grants any ownership rights in Services and Documentation and Apica Content to the Customer. Excluding Apica's Confidential Information, the Customer shall own and shall continue to own all right, title and interest in and to any designs, drawings, data, notes, reports, documentation, hardware, software, materials, ideas, products or any other tangible or intangible item created by the Customer in connection with the Customer's use of the Services. Each Party shall own all rights, title and interest in, any and all of its ideas, concepts, techniques, know-how, programs, systems, methods, methodologies, procedures, and processes that it acquired or developed prior to the Customer's use of the Services, and neither Party will acquire any right, title, or interest in such intellectual property rights of the other Party.

5. ACCESS TO SERVICES AND PASSWORDS

The Customer shall access the Services via Apica designated platform and/or instructions. Access to and use of the Services requires appropriate connections to the Internet. To be able to use the Services the Customer need and will be provided login user name and password from Apica. The use/subscription term commences on the Activation Date set forth in applicable Order Form. Customer is solely responsible, at Customer's expense, for acquiring, installing, maintaining, and updating all hardware, computer software, and communications capability necessary for connecting to the Internet and for the use of the Services.

The Customer's designated login user name(-s) and password(-s) are strictly confidential and may only be used by the Customer. The Customer is responsible for all activities that occur during the Customer's use of the Services. The Customer agrees to immediately notify Apica of any unauthorized use of any Services, usernames or passwords or account or any other known or suspected breach of security.

6. BASIC SUPPORT, ERROR NOTIFICATION

Basic support services for Services shall be provided during Apica's business hours Monday – Friday (8 am – 5 pm Customer Time Zone). A basic support service means that the Customer can request for Apica's remote assistance with changes in the configurations with the Services, and/or interpretation of statistics. Basic support services are provided per email (support@apicasystem.com) or by telephone. Any support request shall promptly be notified to Apica every day per email support@apicasystem.com or by telephone during Apica's business hours Monday – Friday (8 am – 5 pm Customer Time Zone). Apica will use commercially reasonable efforts to respond to the Customer's support requests in connection with the Services (Support Response), during Apica's business hours (9 am – 5 pm Customer Time Zone), within a 2 business hour window from being notified of a support issue by the Customer to support@apicasystems.com.

7. SERVICES LEVELS AND CHRONIC SERVICES FAILURE

The Services are provided using the software-as-a-service model. A Service shall be considered available (Availability) so long as the Customer is able to log in to the Apica user interface and see application performance data for applicable Service. Availability of each Service is measured on a monthly basis over all days of the month (24h/day). Apica endeavors to make each Service available during every day throughout the month ("Service Time"), with the exception of planned and unplanned maintenance that occur periodically throughout the month as communicated to the Customer via email and within a reasonable time prior to the commencement of such maintenance. Maintenance time is excluded from Service Time. Apica will use commercially reasonable efforts to maintain Availability of at least 98.5 % during any calendar month. Excluding maintenance time, in the event the Availability of any of the Services drops below 98.5 %, the fees may be reduced as agreed between the Parties and expressly set forth in the applicable Order Form. Any such price reduction amount will be compensated to the Customer as follows. At Apica's option, Apica shall promptly either (a) refund the reduced amount by way of reducing the same amount from future payments for Services under each applicable Order Form or, in the event of termination of the any Order Form by means of repayment to the Customer, or (b) re-perform the unavailable portion of the Services.

If there is chronic service failure of any Services the Customer may terminate such Services and associated local access service that cannot be utilized if the Services is disconnected without liability and will receive a refund of unused pre-paid fees, and not be liable for any future fees under the applicable Order Form.

8. THE CUSTOMER'S DATA AND SECURITY

All Customer's data submitted by the Customer to Apica will remain the sole property of the Customer to the full extent provided by law. The Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all such data. The Customer may copy for internal use only any reports generated through use of the Services, and any other content accessed through the Services that indicates it may be copied by Apica's customers. As part of the Customer's use of the Services, the Customer may receive reports assessing the performance of the Customer's

website during testing. The reports will be generated from sources believed to be reliable. However, Apica does not guarantee the accuracy, adequacy, or completeness of the reports and is not responsible for any errors or omissions.

The Customer grants to Apica and its affiliates a non-exclusive license to use, copy, store, transmit and display technical information, excluding any Confidential Information, and Customer Data to the extent reasonably necessary to provide and maintain the Services. Apica may disclose this information, excluding the Customer's identity and other information specific to the Customer, to others but not in a form that personally identifies Customer. Apica may aggregate anonymous statistical data regarding use and functioning of its system by its various users, including the Customer. Such aggregated statistical data will be the sole property of Apica. Apica will use commercially reasonable security measures to protect the Customer's data against unauthorized disclosure or use. Apica's security (privacy) policies in effect from time to time are located at www.apicasystem.com/privacy.

9. LINKS TO THIRD PARTY SITES

The Customer may link to third party sites through the use of the Services. The third party sites are not under the control of Apica, and Apica is not responsible for the contents of any third party sites, any links contained in third party sites, or any changes or updates to third party sites. Apica is providing these links to third party sites to the Customer only as a convenience, and the inclusion of any link does not imply an endorsement by Apica of the third party site.

10. INSURANCE

At all times applicable to Apica's obligations under applicable Order Form and/or SOW, Apica shall, at no cost to the Customer maintain sufficient insurance to perform and otherwise meet its obligations.

11. WARRANTY AND WARRANTY DISCLAIMERS

Apica warrants that; (a) the Services and Support Packages provided to the Customer is and will be completed in a professional, workmanlike manner, with the degree of skill and care that is required by good, and sound professional procedures, and shall be completed in accordance with applicable Order Form and Service Description, and these General Terms; (b) the Services does not, to the best of Apica's knowledge, misappropriate, violate or infringe any copyright, trademark, mask work, trade secret, patent or other intellectual property or proprietary right of others; and (c) Apica has full power to grant the rights granted to the Customer under applicable Order Form(-s). The Services may include Third Party Services and Third Party Materials. Apica does not supply and is not responsible for any Third Party Services or Third Party Materials, which may be subject to their own licenses, end-user agreements, privacy and security policies, and/or terms of use. APICA MAKES NO WARRANTY AS TO THIRD PARTY SERVICES OR THIRD PARTY MATERIALS.

For any defective or non-conforming portion of the Services covered by the foregoing warranty, Apica shall promptly upon the Customers notice of any non-conformity, at Apica's option perform one of the following measures: (a) re-perform the Services, (b) correct or replace the non-conforming portion, or in the event that (a) and (b) are not commercially practicable, (c) refund any amounts paid by the Customer for the defective or nonconforming portion of the Services by way of reducing the same amount from future payments for Services under each applicable Order Form or, in the event of termination of the any Order Form by means of repayment to the Customer. Any refund hereunder will be the amounts paid by the Customer for the nonconforming use of the Services. Any notice of any nonconformity by the Customer to Apica must be in writing and within 30 days after the Customer first encounter any such nonconformity.

THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY APICA. THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. APICA EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, ACCURACY OR QUIET ENJOYMENT. EXCEPT AS STATED HEREIN, THE SERVICES, SERVICE PACKAGES, PROFESSIONAL SERVICE AND DOCUMENTATION ARE PROVIDED TO THE CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES. APICA DOES NOT WARRANT THAT USE OF THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. APICA IS NOT RESPONSIBLE FOR SOFTWARE INSTALLED OR USED BY CUSTOMER OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

12. INDEMNIFICATION

Apica will, at its expense and at the Customer's request, defend,

indemnify and hold harmless the Customer and its officers, directors, employees from and against any and all claims, actions, demands, liabilities, settlements, costs, damages and fees (including attorneys' and other professionals' fees and costs) arising, in whole or in part, in connection with (a) any allegation that any portion of the Services, Professional Services, Deliverables or Documentation misappropriates, violates or infringes any third party's patent, copyright, trademark, trade secret, or other intellectual property or proprietary right; (b) any bodily injury, personal injury, death or property damage caused by Apica or Apica's employees; (c) any gross negligence and willful misconduct of Apica or Apica's employees; or (d) Apica's breach of the warranties set forth herein.

The Customer will, at its expense and at Apica's request, defend, indemnify and hold harmless Apica and its officers, directors, employees from and against any and all claims, actions, demands, liabilities, settlements, costs, damages and fees (including attorneys' and other professionals' fees and costs) arising, in whole or in part, in connection with a claim, suit, action, or proceeding by a third party; (a) alleging that the Customer's data or information supplied by the Customer infringes the intellectual property rights or other rights of a third party or has caused harm to a third party, (b) arising from any third party subpoena or compulsory legal order or process that seeks Customer Data and/or other Customer-related information or data, including, without limitation, prompt payment to Apica of all costs (including attorneys' fees) incurred by Apica as a result, or (c) arising out of the Customer's breach of contract. In case of such subpoena or compulsory legal order or process, Customer also agrees to pay Apica for its staff time in responding to such third party subpoena or compulsory legal order or process at Apica's then applicable hourly rates.

In case of any claim that is subject to indemnification as set forth herein, the Party that is indemnified (Indemnitee) will provide the indemnifying Party (Indemnitor) reasonably prompt notice of the relevant claim. Indemnitor will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification as set forth herein. Each Party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement of any action or proceeding covered by this Section to the Indemnitor upon request. Claims may be settled without the consent of the Indemnitee, unless the settlement includes an admission of wrongdoing, fault or liability.

Each Party shall, in order not to lose its right to claim damages, put forward such claim no later than 30 days from the time when the Party noticed or should have noticed the ground for the claim, however no later than 6 months from each Activation Date.

13. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE ON ANY THEORY OF LIABILITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL REMAIN IN FULL FORCE AND EFFECT REGARDLESS OF WHETHER EITHER PARTY'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

EACH PARTY'S SOLE, EXCLUSIVE AND MAXIMUM LIABILITY TO THE OTHER UNDER THIS AGREEMENT SHALL ON AGGREGATE BE LIMITED TO THE FEES PAID TO APICA UNDER APPLICABLE ORDER FORMS DURING THE 12 MONTHS PRECEDING THE CLAIM.

14. CONFIDENTIALITY

"Confidential Information" means any information that is disclosed by one Party (the Discloser) to the other (the Recipient), which, at the time it is disclosed, in any form, is identified or designated by Discloser as "confidential or proprietary" or reasonably should be known by Recipient to be proprietary or confidential information of Discloser. The Recipient shall not use or disclose the Discloser's Confidential Information without the prior written consent of the Discloser, except; (a) as specifically permitted by the Discloser; or (b) for the purpose of performing its obligations or enforcing its rights under these General Terms, Order Form and SOW, provided that such disclosures are made only to those employees, consultants, contractors, professional advisors or third party service providers with a direct business need to know and who have agreed in writing to confidentiality provisions that provide the Discloser with at least as much protection as those contained herein. Confidential Information will exclude information that: (a) the Recipient can demonstrate to have had rightfully in its possession prior to disclosure to the Recipient by the Discloser; (b) is now or subsequently becomes available to the public through no wrongful act of the Recipient; (c) has been rightfully received by the Recipient from a third party who has the right to transfer or disclose it to the Recipient without restriction on disclosure; (d) has been independently developed by the Recipient

without the use of any Confidential Information as evidenced by appropriate documentation; or (e) has been approved for release by written authorization executed by an authorized officer of the Discloser. Notwithstanding the foregoing, if the Recipient is required to disclose Confidential Information pursuant to a court order or other requirement of applicable law, the Recipient shall provide the Discloser with prompt written notice of any such requirement sufficient to permit the Discloser to seek and obtain appropriate protective orders prior to such disclosure by the Recipient. All Confidential Information remains the property of the Discloser and no license or other rights in the Confidential Information is granted hereby. All information provided hereunder is provided 'as is' and without any warranty, express, implied, or otherwise, regarding its accuracy or performance. At any time at the request and choice of the Discloser, the Recipient will either return to the Discloser or destroy all of the Discloser's Confidential Information, in whatever form, which is in its custody or control.

15. SUSPENSION OF SERVICES BY APICA

Apica, in its sole discretion, may suspend the Customer's username and password, account, or use of the Services if the Customer materially violates/breaches any right and/or obligation under these General Terms and/or any applicable Order Form, and such violation/breach has not been cured promptly within 10 days of notice of such breach. In the event the Customer violates/breaches any of its duties and obligations in Section 3, Apica may suspend the Services immediately without notification. Should there be a Services suspension; Apica reserves the right to charge a fee to reinstate the Services.

16. TERM AND TERMINATION

The Term of each use/subscription of Service and/or Support Package is set forth in applicable Order Form and, unless stated otherwise in applicable Order Form, the Term renews automatically for successive terms of equal duration unless either Party notifies the other Party of its intent to not renew at least 30 days prior to the end of applicable Term. Each Order Form must be terminated individually, and such termination of an individual Order Form shall not terminate other Order Forms. Either Party may terminate an Order Form at any time, upon written notice, if the other Party materially breaches any of its obligations under and pursuant to such Order Form, and such breach is not remedied within 30 days after written notice thereof by the other Party.

Apica may terminate any and all Order Forms by giving the Supplier not less than 7 days and not more than 30 days notice in writing, if there is a change of control of the Customer and such new controller of the Customer in Apica's sole judgment is a direct competitor of Apica.

Term and termination of Professional Services shall be in accordance with applicable SOW. Termination of one or all of the Order Forms shall not automatically terminate any Professional Services and vice versa.

17. EFFECT OF TERMINATION

Unless agreed otherwise between the Parties and except as stated below, if termination of any Order Form and/or SOW pursuant to Section 16 occurs prior to end of Term, the Customer shall not be entitled to any refund of any Committed Fee pre-paid and shall be responsible for paying all (remaining) Committed Fees under the applicable Order Form and/or SOW through the Term. If termination of any Order Form and/or SOW occurs prior to end of Term, for Apica's breach of contract, or when Apica terminates for change of control, Apica shall refund to the Customer, upon demand, any unused portion of any Committed Fees prepaid by the Customer.

Termination of Order Form and/or SOW shall not limit either Party from pursuing other remedies available to it thereunder, including injunctive relief.

At the Customer's request, within 30 days of the termination of any Order Form for any reason, Apica shall make available one backup of all data and information generated and/or held by Apica as a result of the Customer's use of the Services under the terminated Order Form. The backup shall be stored in Apica's standard format. Customer agrees and acknowledges that Apica has no obligation to retain any Customer Data, and Apica may delete Customer Data that remains in Apica's possession or control more than 60 days after termination.

18. FORCE MAJEURE

Neither Party will be deemed in default, to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any event beyond the reasonable control of such Party, including without limitation, any act of God, fire, earthquake, natural disaster, accident or act of government (in any case to the extent that such event is not due to, nor arises out of, the negligence of the Party whose performance is delayed), and provided that the Party seeking to be excused gives the other Party written notice thereof promptly and, in any event, within 15 days of discovery thereof and uses its reasonable efforts to continue to so perform or cure. In the event of such a force majeure event, the time for performance or cure will be extended for a period equal to the duration of the force majeure event.

19. PUBLICITY

Neither Party may use, without the other Party's prior written consent in each instance, the names, characters, artwork, designs, trade names, trademarks or service marks of the other Party.

20. ASSIGNMENT

The rights and obligations of the Parties under these General Terms and/or any applicable Order Form and/or SOW shall be binding upon and inure to the benefit of the Parties' respective successors, executors and administrators; provided however that, since the Customer has specifically contracted for Services and/or Support Packages and/or Professional Services, Apica may not assign, delegate or subcontract its obligations under any and all Order Forms and SOW either in whole or in part without the prior written consent of the Customer, which the Customer may withhold in its sole and absolute discretion. Apica may use subcontractors to provide the Services and/or Support Packages and/or Professional Services, provided also the names of such affiliates are provided to the Customer. Apica shall not be relieved of any obligation under these General Terms and/or any applicable Order Form and/or SOW by virtue of performance of any portion of services by a subcontractor, regardless of whether the subcontractor was approved in advance by the Customer.

21. ADDITIONAL REMEDIES; EQUITABLE RELIEF

Any remedies at law or equity not specifically excluded by the Parties remain available to both Parties. The Parties expressly acknowledge and agree that a breach of any of the provisions of these General Terms and/or any applicable Order Form and/or SOW may result in irreparable harm to the non-breaching Party, and in such case, the non-breaching Party shall have the right to seek to enforce any provision of these General Terms and/or any applicable Order Form and/or SOW, and any of its provisions by injunction, specific performance or other equitable relief, in any event without prejudice to any other rights and remedies that such Party may have.

22. ATTORNEYS' FEES

If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of these General Terms and/or any applicable Order Form and/or SOW, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit and expenses, in addition to any other relief to which such prevailing Party may be entitled. As used herein, 'prevailing Party' includes without limitation, a Party who dismisses an action for recovery in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

23. GOVERNING LAW, DISPUTE RESOLUTION, JURISDICTION AND VENUE

These General Terms and/or any applicable Order Form and/or SOW and the rights and obligations of the Parties pursuant thereto will be governed by the laws of the State of California, without regard to conflicts of law principles. The provisions of the United Nations Convention on Agreements for the International Sale of Goods will not apply. If there is a dispute between the Parties relating to these General Terms and/or any applicable Order Form and/or SOW and the rights and obligations of the Parties pursuant thereto, the Parties shall first attempt to resolve the

dispute by escalating the dispute within their respective organizations. If they are unable to resolve the dispute within 30 days after the complaining Party's written notice to the other Party, the Parties will seek to resolve the dispute through non-binding mediation conducted in the State of California. Each Party must bear its own expenses in connection with the mediation and must share equally the fees and expenses of the mediator. If the Parties are unable to resolve the dispute within 60 days after commencing mediation, either Party may commence litigation in the state or federal courts in the State of California. The Parties irrevocably submit to the exclusive jurisdiction of those courts and agree that final judgment in any action or proceeding brought in such courts will be conclusive and may be enforced in any other jurisdiction by suit on the judgment (a certified copy of which will be conclusive evidence of the judgment) or in any other manner provided by law. Notwithstanding the above, either Party may seek equitable relief to protect its confidential information or intellectual property at any time, provided it does so in the state or federal courts in the State of California.

24. NOTICES

Any notice required or permitted hereunder shall be in writing, and shall be given to the appropriate Party at the address first set forth in applicable Order Form and/or SOW, or at such other address as the Party may hereafter specify in writing. Such notice shall be deemed given: upon personal delivery to the appropriate address; or 3 business days after the date of mailing if sent by certified or registered mail; or 1 business day after the date of deposit with a commercial courier service offering next business day service with confirmation of delivery.

25. SURVIVAL OF TERMS

All terms and provisions of these General Terms and/or any applicable Order Form and/or SOW, including any and all exhibits, addenda and amendments hereto, which by their nature are intended to survive any termination or expiration, shall so survive.

26. RELATIONSHIP OF THE PARTIES

No employment relationship is created between the Parties. At all times during the term hereof, Apica shall retain its independent status and use its own discretion in performing the Services, Support Packages and/or Professional Services, subject to general direction by the Customer and to the specific requirements of these General Terms and/or any applicable Order Form and/or SOW. Nothing in these General Terms and/or any applicable Order Form and/or SOW will be construed as creating a partnership, franchise, employment, joint venture or agency relationship or fiduciary duty of any kind between the Parties.

27. INDEPENDENT DEVELOPMENT

Provided there is no infringement of the other Party's intellectual property rights or breach of a Party's obligations of confidentiality, nothing in these General Terms and/or any applicable Order Form and/or SOW will impair either Party's right to develop, manufacture, purchase, use or market, directly or indirectly, alone or with others, products or services competitive with those offered by the other. The Customer is neither obligated to accept or purchase any product or service from Apica at any time.

28. MODIFICATION

Any waiver, modification or amendment of any provisions of this these General Terms, Order Form and SOW shall be effective only if in writing and signed by the Parties.

DESCRIPTION

The following service descriptions and additional terms are applicable to the purchase, subscription and use of Apica services and products (Services) and Professional Services, and shall be deemed incorporated into the Order Form for Services and/or Statement of Work for Professional Services as in effect between the Customer and Apica. Apica retain the right to make changes to the Services and this Description. Nevertheless, Apica shall only make changes that do not negatively impact the Customers, and shall apply generally to all Customers. Detailed descriptions, specifications etc for all Apica Services will be provided from Apica representatives.

Content:

1. APICA MONITORING SERVICES
2. LOAD TESTING SERVICES
3. ON-SITE SUPPORT PACKAGE
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1. APICA MONITORING SERVICES

General: Apica WebPerformance™ monitors web applications from the Internet and end-user perspective.

No installation: WebPerformance is software as a service (SaaS) and no installation is required. All the monitoring is made from Apica's agents around the world. The Customer has access to a web interface to manage the monitoring, reports, alerts etc. The Customer can also create different users with different dashboards.

Global Monitoring: Apica has over 350 agents worldwide and the Customer can measure from the Customer or end-user perspective, wherever they are in the world.

Alerts: The Customer can setup alerts by SMS or mail and is included in the Services.

Apica Real Browser Check: ApicaWatch executes a real web browser and renders the whole web page in a real browser including images, JavaScript, style sheets etc. Every component is measured and the Customer can see how long third party components took as well.

Apica Real Browser Check (Scenario / Selenium): ApicaWatch executes a real web browser and renders the whole web page in a real browser including images, JavaScripts, style sheets etc. With ApicaWatch scenario you can monitor a whole transaction flow as log in function, booking flow etc. in a real browser. Every component is measured so you can see how long your third party components took, such as Facebook, Google analytics etc. When an error occurs, a screen capture is performed, so you can see exactly what the page looked like.

Basic (URL-Checks): Apica WebPerformance™ basic monitoring includes ping, port or just verifying that a web site is responding.

Internal Agent: With an internal agent you can monitor your uptime / response time from behind your firewall.

Support: Basic support.

2. LOAD TESTING SERVICES

General: Apica's LoadTest™ establishes the performance capacity of your web site under critical load volumes. Some of the following questions are answered via Load Testing Services:

Peak Test: What is the maximum number of page views your site can handle during a short interval of time? What are the response times near maximum load? At what levels do serious faults emerge? Does the system recover when load is reduced, or is there a need for rebooting?

Response times at various loads: By increasing the load on an application, we may analyze and report via detailed performance graphs how response times and transaction frequencies correlate with the load.

Bandwidth analysis: How does the bandwidth usage vary with the load? Is bandwidth a bottleneck in your environment?

Bottleneck analysis: Are there specific URLs or objects that account for a large share of the response times at high loads? Are there specific resources in the IT infrastructure (i.e. load balancer, front end web servers, databases, CPU, memory etc.) that account for a large share of the response times at high loads?

Apica's Global Load Test Cluster Infrastructure: Apica has a distributed load test cluster in all major cloud providers, private datacenters, as well as Apica's very own datacenters. This enables any variation of geographical testing.

Apica's Self-Services Load Test Portal: Apica provides a web-based portal that enables customers to re-run load test scripts on an ongoing basis according to their subscription level. This rerun portal is useful for in house performance teams who want to leverage Apica's global load test clusters for ongoing testing after the initial script development has been completed. The rerun portal is limited according to the subscription level

purchased. The typical limitations are the following: Geographic Locations, Number of Virtual Users, and additional features within the portal.

Apica ProxySniffer: Apica ProxySniffer is a leading load test script creation and execution software solution designed for all load-test practitioner levels. The software automatically generates load test scripts and scenarios by pre-recording real end-user behavior scenarios. Users easily generate and run test scripts with no programming required. Results provide insight into Web application performance, infrastructure limits and more.

Support: Basic support

3. ON-SITE SUPPORT PACKAGE

Apica On-Site Professional Services Support Package is a professional service designed to complement standard support services with a higher level of technical expertise based on Customer requirements.

The On-Site Professional Services Support Package will include but not be limited to adding new product functions requested by Customer fitting into general Apica product development strategy, providing support for error-analysis on performed load tests, providing support for configuring Apica solutions and tuning appropriate load generators or monitoring agents, analysis and enhancement of Apica solution product features, and Apica solutions product training.

4. OFF-SITE SUPPORT PACKAGE

Apica Off-Site Professional Services Support Package is a professional service designed to complement standard support services with a higher level of technical expertise based on Customer requirements.

The Off-Site Professional Services Support Package from one or many Apica employees designated by Apica includes but is not limited to up to a specific set of hours of on-call testing support per month, 24x7 technical email support, bi-weekly status conference calls, full scripting and Apica ProxySniffer support, complete web portal for monitoring and testing with recurring reports and alerting, and new check location provisioning including completely new agents.

5. PROFESSIONAL SERVICES

Unless otherwise defined, the capitalized terms shall have the same meaning as such terms in the Apica General Terms and Conditions located at www.apicasystem.com/terms (General Terms). As used in herein, "Professional Services" or "Professional Services" shall mean the professional services described herein or in a Statement of Work (SOW) referencing the General Terms. The terms set forth for Professional Services are intended to supplement, not replace, the General Terms, and in the event of a direct conflict between the General Terms and the terms for Professional Services (as contained herein and in applicable SOW), the terms for Professional Services shall control with regard to the subject matter addressed. In addition to the General Terms, the following additional terms and conditions shall apply to any Professional Services provided by Apica:

Professional Services: Apica shall provide the Customer with Professional Services as specified in the Statement of Work (SOW) specifying (a) the Services to be performed and Deliverables, (b) Delivery/Performance Schedule. (c) Fee Schedule and expenses, Payment Terms and incorporated herein by this reference. The Customer may engage Apica to provide additional Professional Services by entering into additional SOW which specifically reference the General Terms and are signed by both Parties.

Fees: The Customer shall pay Apica as set forth in the SOW, and reimburse Apica for all reasonable travel meal, accommodation and other related out-of-pocket expenses actually incurred in connection with its

performance of the Professional Services. The Customer is responsible for all taxes, duties, and customs fees imposed on or with respect to the Professional Services, excluding taxes based on Apica's income. The originals of all invoices and related back-up documentation shall be sent to the address specified SOW, together with true and correct copies of each such invoice and all back-up documentation. The fees set forth in the SOW and the reimbursement of expenses constitutes Apica's entire remuneration for its performance of the Professional Services under such SOW.

Approval of Employees and Subcontractors: The Customer shall have the right to approve, in advance, any Apica's employees, including employees, consultants and independent contractors (the Apica's Employees) assigned to perform the Professional Services. The Customer shall have the right to request that any Apica's Employees be removed and replaced, immediately upon receipt of notice, if any such person fails or refuses to perform the Professional Services in a timely, professional and competent manner, and as otherwise required by the applicable SOW. Apica may not subcontract with third parties to perform any part of the Professional Services without the Customer's express written consent not to be unreasonable withheld. In all cases, Apica shall enter into a written agreement with any such subcontractor, which provides for obligations of indemnification and confidentiality that provide the Customer with at least as much protection as those set forth in the General Terms, including without limitation, the terms for Professional Services. Any subcontractor's employees shall be deemed Apica's. Apica shall not be relieved of any obligations by virtue of performance of any Professional Services by a subcontractor.

Security and Safety Requirements: At all times while on the Customer premises, Apica's Employees shall comply with applicable and reasonable security and safety rules, as directed by the Customer.

Equipment and Tools: Except as expressly set forth in a SOW, Apica will provide all equipment and tools necessary to perform the Professional Services, including without limitation all personal computers and similar equipment.

Change Orders: Either Party may initiate a change order (as defined below) as a result of a change of project scope and cost, an increase or change to project Deliverables (as defined in Section 9 below), scheduling changes, and/or technology limitations. The Parties shall comply with the following procedures related to any such Change Order: (a) The requesting Party shall submit to the other Party a written request for any change (Change Order). (b) As soon as reasonably possible after receipt of any such Change Order, and in any event not more than 10 days after receipt thereof, the receiving Party shall provide the requesting Party with a written statement offering to perform consistent with the Change Order, or proposing modifications to the Change Order, or rejecting the Change Order. Any statement offering to perform or proposing modifications to the Change Order will include detailed information as to the availability of resources, and the impact, if any, on the time for completion of Professional Services or the delivery of any Deliverables and/or the cost of the Professional Services. (c) Each Change Order shall be signed by the authorized representatives of each Party and shall constitute a formal modification to and become a part of the SOW. In no event shall the SOW, and/or the terms for Professional Services contained herein be deemed amended except through a Change Order approved by authorized representatives of each Party in accordance with the provisions as described herein.

Term and Termination: Term and termination of Professional Services shall be in accordance with applicable SOW. Either Party may terminate or all SOW at any time, upon written notice, if the other Party materially breaches any of its obligations herein and such breach is not remedied within 30 days after written notice thereof by the other Party. The

Customer may terminate any or all SOW without any reason by giving 10 days written notice to Apica. If the Customer terminates any SOW for convenience, it will pay Apica all undisputed fees and expenses for Professional Services rendered prior to the effective date of termination, all accepted Deliverables, and a prorated amount for any partially completed Deliverables under that SOW. Upon receipt of any notice of the Customer's election to terminate any SOW, Apica will promptly take all steps necessary and appropriate to mitigate further fees and expenses being incurred.

Deliverables; Acceptance of Deliverables: Deliverables means all software, documents, reports, summaries, schedules, plans, notes, supporting materials, recommendations, drawings and other similar works of authorship specifically developed for the Customer, whether in hard copy or electronic form, to be provided by Apica to the Customer or prepared by Apica for the Customer as Professional Services pursuant to the terms herein and any SOW issued hereunder. The Customer will inform Apica in writing within 10 business days of receipt of the Deliverable, whether it accepts or rejects any Deliverable. If the Customer rejects the Deliverable, Apica shall correct and re-deliver the rejected Deliverable within 10 business days after receipt of the Notice. The Customer will, within 10 business days after such re-delivery, accept or reject the Deliverable in accordance with the foregoing procedure, which procedure will be repeated until the Customer either accepts the Deliverable or terminates this SOW. The Customer may reject any Deliverable that does not comply with the applicable SOW and/or with the Customer's standards. If the Customer fails to notify Apica within the specified time, the Customer will be deemed to have accepted the Deliverable.

Insurance: Unless agreed otherwise between the Parties, the provisions of Insurance in the General Terms shall apply to all Professional Services.

Indemnity: The provisions of Indemnification in the General Terms shall apply to all Professional Services and Deliverables provided by Apica under any and all SOW, and any reference therein to Professional Service, Deliverables and/or Documentation shall be deemed to include Deliverables and Professional Services for the purpose of determining the scope of Apica's obligations.

Additional Warranties: The warranties set forth in the General Terms, shall also apply with regard to any Deliverables or Professional Services provided by Apica. In addition, Apica represents and warrants that: (a) the Professional Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by good, and sound professional procedures; and (b) the Professional Services and shall be completed in accordance with applicable specifications and SOW and shall be correct and appropriate for the purposes stated therein.

Ownership: Except as otherwise provided in a SOW signed by an authorized representative of the Customer, the Customer shall own all right, title and interest in all Deliverables provided or generated to the Customer by Apica under each applicable SOW. Apica owns all right, title and interest in, and may in the course of providing Professional Services hereunder use, provide, modify, create or acquire rights in, various ideas, concepts, techniques, know-how, programs, systems, methods, methodologies, procedures, and processes (Apica's Technology); provided, however, that in no event shall Apica create or acquire rights in, or be entitled to use for the benefit of any third party, any Apica Technology to the extent it includes the Customer Confidential Information. Each Party shall own all rights, title and interest in, any and all of its ideas, concepts, techniques, know-how, programs, systems, methods, methodologies, procedures, and processes that it acquired or developed prior to applicable SOW, and neither Party will acquire any right, title, or interest by virtue of its performance in the intellectual property rights of the other Party.