



## ONLINE SERVICE AGREEMENT

This online service agreement (“Agreement”) is a binding legal contract between you and Apiworx, LLC. (“we”, “us”, or “Apiworx”). this agreement governs your use of any and all Apiworx services (“services” or “Apiworx Services”), including without limitation, Apiworx ecommerce services, the Apiworx website, Apiworx software application(s), Apiworx mobile application(s) and any other materials made available by Apiworx. by downloading, installing, accessing or using the services, you (a) agree to be bound by this agreement; (b) acknowledge and agree you have independently evaluated the desirability of using the services and are not relying on any representation, guarantee, or statement other than as expressly provided in this agreement; and (c) represent you are lawfully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this agreement and are either over of the legal age of majority in the jurisdiction in which you reside or are an emancipated minor, or possess legal parental or guardian consent and that you are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this agreement. in addition, if this agreement is being agreed to by a company or other legal entity, then the person agreeing to this agreement on behalf of that company or entity represents and warrants that he or she is authorized and lawfully able to bind that company or entity to this agreement. you should print and retain a copy of this agreement for your records by using the print functionality in your browser. if you do not agree to this agreement, you may not download, install or use any Apiworx software applications or services, including the Apiworx website.

### SERVICES

1.1 Except as otherwise expressly agreed upon in writing by Apiworx and subject to the terms and conditions of this Agreement and your payment of all relevant fees, we grant you and your Users (i) a limited, personal, revocable, non-exclusive, non-transferable, non-sub-licensable, non-assignable, non-transferable license and right to access and use our Services, content, and other materials provided by Apiworx or its third party vendors for your internal use in strict accordance with this Agreement. Users shall mean you, your employees, directors, representatives, consultants, independent contractors, agents, customers, and contracting parties who use your account to access the Services offered by Apiworx. All rights not expressly granted under this Agreement are retained by Apiworx.

1.2 Certain third party services used in conjunction with the Apiworx Services (“Plugin Services”) may have their own terms and conditions which must be accepted and agreed to prior to your use of such Plugin Services. Such additional service terms will be presented to you prior to use of such Plugin Services, and your use of any Plugin Services with the Apiworx Services will indicate your acceptance of the additional terms and conditions.

1.3 In connection with the Services, we may afford you the ability to interface and interoperate with certain independent third party software and to upload data from that software. This functionality is dependent on the operation of the third party software and is provided on an entirely as-is basis. You will be solely responsible for connection and any service fees associated with the use of such independent third party software.

1.4 You must have Internet connection to access the Services. You will be solely responsible for connection of your systems to a telecommunications service that provides Internet access to access and use of the Services and any associated fees. Apiworx shall not be held responsible for any inability to use the Services due to faulty or no Internet connection.

1.5 To access and use the Services, you will be required to provide certain personal account registration information including without limitation, your name, billing address, contact phone number, email address and other information (“Personal Information”). You represent and warrant that the Personal Information that you provide is accurate, current, and complete, and agree to promptly update any of the information if it changes.

1.6 You are solely responsible for maintaining the confidentiality of all passwords associated with your account, and you are solely responsible and liable for all transactions and activities that occur on your account. You shall immediately notify Apiworx of any unauthorized use of your account or if any other breach of security has occurred. In no event shall Apiworx be liable for any unauthorized use of your account.

1.7 You agree not to sell, assign, rent, lease, distribute, export, import, act as an intermediary or provider, or otherwise grant rights to third parties with regard to the Services or any part thereof without Apiworx’s prior written consent. To resell Services offered by Apiworx, you must join our affiliates program. For information on how to do so, please contact us.

1.8 Apiworx reserves the right to add, remove, or modify features or functions, or to provide fixes, updates and upgrades, to the Services in its sole discretion without prior notice to you. In the event that a change to the Services would, in Apiworx’s reasonable discretion and judgment, permanently materially diminish or impair the functionality of the Services (“Material Change”), Apiworx shall provide you with written notice of such Material Change at least sixty (60) days prior to the date the Material Change will take effect. If the Material Change is unacceptable to you, you may terminate the Services without penalty. Any use of the Services after the effective date of Material Change will be deemed your acceptance of the Material Change. You acknowledge and agree that Apiworx has no obligation to make available to you any subsequent versions or upgrades made to the Services. You also agree that you may be required to pay additional fees or enter into a renewed



version of this Agreement if you desire to download, install, or use a new version of the Services.

### **RESTRICTIONS**

2.1 You may only use the Services as described in the then-current documentation, if any, we make generally available to our customers for use of the Services (the “Documentation”) and in accordance with our Acceptable Use Policy (Section 3). Any breach of this Agreement by you, your employees, agents, independent contractors, customers, or contracting parties, will constitute a breach by you. Except as expressly authorized in Section 1 above, you will not (and will not allow any third party to): (i) permit any third party to access and use the Services; (ii) decompile, disassemble, or reverse engineer the Services, except to the extent expressly authorized under the law; (iii) use the Services or any of our Confidential Information to develop a competing product or service; (iv) provide, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use the Services for the benefit of any third party; (v) use the Services, or allow the transfer, transmission, export, or re-export of the Services, including by way of a “deemed export,” in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (vi) remove any copyright, trademark, proprietary rights, disclaimer or warning notice included on or embedded in any part of the Services or Documentation. Under no circumstances, will we be liable or responsible for any use or any results obtained by the use of the Services in conjunction with any other software or third party products. All such use will be at your sole and exclusive risk.

2.2 With respect to its advertising, offering, Documentation, description or sale of the Services, Apiworx attempts to describe its products as accurately as possible at all times. Nevertheless, Apiworx does not warrant that any descriptions, pricing, availability, or other information relating to the Services from its Website, marketing materials, promotional flyers, advertisements, Documentation or other printed or electronic materials (collectively, “Service Materials”) is always accurate, complete, reliable, current, or error-free. Despite our efforts, it is possible that information provided in Service Materials may be mispriced, described inaccurately, or that the Service may be unavailable. In the event Apiworx determines that a Service is mispriced, described inaccurately, or unavailable, Apiworx reserves the right to take any action it deems reasonable and necessary to rectify the error, including without limitation, canceling your account or subscription to the Services. You agree to notify Apiworx immediately if you become aware of any pricing or descriptive errors or inconsistencies with any Services you order through the Service Materials and comply with any corrective action taken by Apiworx. Apiworx’s sole and exclusive liability will be to use its reasonable commercial efforts to correct any non-conformity. In the event Apiworx is unable through reasonable efforts to correct a defective Service or non-conformity, you may elect to terminate this Agreement and receive a prorated refund of any pre-paid, unused recurring fees. This refund is your sole and exclusive remedy for any non-conformity in the Services.



## ACCEPTABLE USE POLICY (AUP)

Your use of the Services is subject to Apiworx's Acceptable Use Policy (AUP) at all times. If Apiworx finds or is notified that you are using the Services for any use not permitted in this Agreement, Apiworx may in its sole discretion terminate your Service and charge damages caused by your improper use. Prohibited uses include, but are not limited to:

- Behavior that is illegal, obscene, threatening, harassing, defamatory, libelous, deceptive, fraudulent, abusive, improper, malicious, infringing, tortious, or invasive of another's privacy.
- Negligently, recklessly, knowingly, or intentionally transmitting or uploading any material that contains viruses, time bombs, trojan horses, worms, malware, spyware, or any other programs that may be harmful or dangerous.
- Transmitting or uploading any material that infringes, misappropriates, or otherwise violates the foreign or domestic intellectual property rights or other rights of third parties.
- Sending unsolicited messages or advertisements through comment functions available on the Services.
- Violating any U.S. or foreign law through the Services.
- Using the Services in any way that interferes with other customers' and third parties' use and enjoyment of the Services.
- Using the Services in any manner which disrupts, prevents or restricts another customer from using the Services or damaging Apiworx's or another customer's property.
- Using or employing methods and/or devices that are designed or likely to take advantage of, bypass, exploit, or otherwise avoid this AUP.
- You further understand and agree that:
- You may not use the Services in environments requiring fail-safe performance or in which the failure of the Services could lead directly to death, personal injury, or severe physical, business, personal, environmental or other damage.
- You shall not attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means.
- You shall be solely liable for any transmissions sent or material uploaded through the Services under your account.
- You shall abide by all applicable Apiworx policies, procedures, and agreements related to the Services.
- Your use of the Services is subject to all applicable local, state, national, and international laws and regulations (including without limitation those governing account collection, export control, consumer protection, unfair competition, anti-discrimination, securities laws, and false advertising).
- Unusually high usage of the Services may impair Apiworx's ability to provide high quality Services to others and/or indicate unauthorized use of the Services, in which case Apiworx may suspend or
- terminate your account or, upon prior written notice, convert your account to a pay-per-use plan.



## SERVICE LEVEL AGREEMENT / AVAILABILITY

You acknowledge and agree that the Services may not be available 100% of the time. We will use commercially reasonable efforts to make the Services available for your access and use, as contemplated under this Agreement, an average of at least ninety-nine (99%) of the time during each month during the Term (the “Availability Requirement”), excluding any period of Permitted Unavailability. “Permitted Unavailability” includes Planned Outages (as defined below) and any unavailability due to causes beyond our reasonable control, including, without limitation: any software, hardware, or telecommunication failures; interruption or failure of telecommunication or digital transmission links; Internet slow-downs or failures; failures or default of third party software, vendors, or products; and unavailability resulting from your actions or omissions or a failure of your communications link or systems. “Planned Outages” means the period of time during which we conduct standard systems maintenance and any instances requiring emergency maintenance. We will use reasonable efforts to schedule Planned Outages during non-peak hours. In the event we fail to achieve the Availability Requirement, we will use commercially reasonable efforts to correct the interruption as promptly as practicable. In the event we fail to achieve the Availability Requirement in two consecutive months during the term of this Agreement, you may terminate this Agreement upon delivery of written notice to us without further obligation and receive a prorated refund of any pre-paid, unused recurring fees. The refund will be your sole and exclusive remedy and our sole and exclusive liability for failure to achieve the Availability Requirement.

### BETA SERVICES

We may designate certain new functionality or services to be made available in connection with the Services as “Beta Services.” The Beta Services will not be ready for use in a production environment. Because they will be at an early stage of development, operation and use of the Beta Services may be unpredictable and lead to erroneous results. You acknowledge and agree that: (i) the Beta Services will be experimental and will not have been fully tested; (ii) the Beta Services may not meet your requirements; (iii) the use or operation of the Beta Services may not be uninterrupted or error free; and (iv) your use of the Beta Services will be for purposes of evaluating and testing the new functionality and services and providing feedback to us. Your use of the Beta Services will be subject to all of the terms and conditions of this Agreement relating to the Services. You agree to promptly report any errors, defects, or other deficiencies in the Beta Services to us. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ALL BETA SERVICES ARE PROVIDED “AS-IS” AND “AS-AVAILABLE,” WITHOUT WARRANTIES OF ANY KIND AND YOU AGREE TO USE THE BETA SERVICES AT YOUR SOLE RISK. You waive any and all claims, now known or later discovered, that you may have against us and our suppliers and licensors arising out of the Beta Services.

## PROPRIETARY RIGHTS

6.1 You acknowledge and agree that any and all patents, copyrights, trademarks, service marks, trade secrets, and all other intellectual property rights (collectively, “IP Rights”) in the Services are and shall remain the sole and exclusive property of Apiworx and its licensors, as applicable. Nothing in this Agreement intends to or shall grant, transfer, or assign any IP Rights to, or vest any IP Rights in you. You acknowledge that all Services provided hereunder are protected by intellectual property rights of Apiworx and its licensors, as applicable and that you have no rights to undertake, cause, permit, or authorize the transfer, reproduction, modification, creation or preparation of any derivative works, translation, reverse engineering, decompiling, disassembling or hacking with respect to, or disclose Confidential Information pertaining to, the Services or any part(s) thereof. Under no circumstances will you be deemed to receive any right, title or interest to any portion of any Services, and all right, title and interest will at all times will vest exclusively in us and our licensors. This is not a “work made for hire” agreement, as that term is defined in Section 101 of Title 17 of the United States Code (“the Copyright Act”). You will preserve all Services from any liens, encumbrances, and claims of any individual or entity. You will not use any of our information or data to contest the validity of any of our intellectual property or our licensors. You are only entitled to the limited use of the rights expressly granted to you in this Agreement. You agree not take any action to jeopardize, limit, or interfere with the IP Rights of Apiworx, and you acknowledge and agree that any unauthorized use of the IP Rights is a violation of this Agreement, as well as a violation of applicable intellectual property laws. You acknowledge and understand that all title and rights in and to any third party content that may be accessed through the Services is the property of the respective content owners and may be protected by applicable copyright or other intellectual property laws and treaties. Any unauthorized use of our IP Rights and/or data will constitute a material, non-curable breach of this Agreement.

6.2 To the extent you provide us with any content (e.g., graphics, logos, artwork, text, data) for use in connection with the Services (collectively, the “Customer Content”), you grants us a non-exclusive, world-wide, fully-paid up, royalty- free, non-exclusive, non-transferable (except in connection with an assignment of this Agreement) license to copy, store, record, transmit, display, view, print, and use the Customer Content for purposes of performing this Agreement. You are responsible for obtaining all rights, permissions, licenses, and consents required to furnish the Customer Content to us for use as described above and represent and warrant that you have all rights required to disclose and furnish the Customer Content to Apiworx. Apiworx is not obligated to store your Customer Content or other reports and/or materials generated by the Services and does so only as a convenience to you. You agree that Apiworx has no responsibility or liability whatsoever for



the deletion or failure to store any Customer Content, reports, materials, messages, data or other communications maintained or transmitted by the Services. You acknowledge and agree that you are solely responsible for preserving and making adequate backups for all Customer Content and other materials and will not rely on us to preserve or make adequate backups of data used in connection with the Services, or to maintain a record of your usage of any part or all of the Services.

## **CUSTOMER SUPPORT**

Apiworx offers customer and technical support to you via support portal and e-mail in conjunction with the Services. Apiworx will use reasonable efforts to troubleshoot and resolve issues reported by you to Apiworx customer support but does not make any representations or guarantees that Apiworx will be able to fully resolve any such issues. Except as provided in this section or by applicable law, Apiworx has no obligation to provide customer support, technical support, or to provide solutions (e.g., bug fixes to software) to any issues that may arise in your particular use of the Services.

## **FEEDBACK**

8.1 You may provide us with suggestions, comments, answers, ideas, feedback or other information (collectively, “Feedback”) with respect to our products and Services. Feedback is entirely voluntary, and we are not required to hold it in confidence. By providing us Feedback, you acknowledge and agree that we may or may not use the Feedback for any purpose without obligation of any kind in our sole discretion. To the extent a license is required for us to make use of the Feedback, you hereby grant us an unlimited, worldwide, irrevocable, non-exclusive, perpetual, transferable, sub-licensable, assignable, fully-paid up, royalty-free license to use the Feedback in our sole discretion.

8.2 From time to time, Apiworx may request to identify you as a user of the Services in its press releases; marketing materials; electronic, printed, and broadcast advertising; newsletters; mailings; tradeshows; other promotional materials; on Apiworx’s website; or any other third-party website where Apiworx or its designated agents may promote the Services. Apiworx will always obtain your prior written authorization before doing so. If you agree to allow Apiworx to identify you as a user for Apiworx’s marketing purposes in writing, you grant Apiworx and its agents a limited, revocable, worldwide, non- exclusive, fully paid-up, royalty-free license to use, reproduce, publish, and display your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

## **MARKETING MATERIALS AND COMMUNICATIONS FROM APIWORX**

Apiworx may send you marketing materials and offer additional promotional services (“Marketing Materials”) to you at no cost or at an additional fee. You hereby agree that Apiworx may send you (including administrators and end users of your account) such Marketing Materials via electronic transmission, e-mail, mail, or otherwise; provided, however, that you may unsubscribe or opt-out of such Marketing Materials at any time by notifying Apiworx Customer Support at support@Apiworx.com or by simply clicking the “Unsubscribe” link provided at the bottom of the promotional email. Even if you opt-out of marketing emails, you understand and agree that Apiworx may continue to send you non- marketing communications regarding important account information, billing statements, changes to your Service agreement or other communications required by applicable law.

## **AGGREGATED DATA**

You grant us a worldwide, non-exclusive, perpetual, irrevocable, transferable, sub-licensable, assignable, fully-paid- up, royalty free license to use Aggregated Data, as defined below, derived from your use of Services for our business purposes, including the provision of products and services to our customers. “Aggregated Data” shall mean statistical user information or data acquired through providing the Services that does not include any personally identifiable information about the customer. You further grant us the right to (i) use the Aggregated Data in any aggregate or statistical products or reports, (ii) transfer and/or disclose the Aggregated Data upon a sale of our company or its assets or other form of reorganization, (iii) disclose Aggregated Data in a summary report that does not show, display or indicate customer specific or customer identifying information, (iv) provide Aggregated Data to a third party service provider, for analytical purposes, and (v) use the Aggregated Data to compare with other organizations within the same industry or group. The Aggregated Data will not be considered your Confidential Information.

## **BILLING AND PAYMENT**

11.1 You agree to promptly pay Apiworx the fees associated with your account, including all applicable taxes and additional fees. Any applicable initiation/installation charges, monthly recurring charges, support charges, and other fees are billed in full in advance. Any additional usage charges are billed in arrears. Except as expressly otherwise provided in this Agreement, all fees are non-refundable. When you subscribe to the Services, you will provide us with a payment method, such as a valid credit card (including proper billing information), and, if applicable, authorize us to collect from your payment method. Any authorization will remain valid until thirty (30) days after you terminate our authority to charge your payment method. Upon termination, you hereby agree that Apiworx may charge you any fees and any other outstanding charges and disconnect your service. You agree to advise and notify Apiworx of any changes to your



payment method, such as credit card account number, change of address or expiration date changes. If the credit card or other payment method on your account is declined or fails for any reason, Apiworx will use reasonable efforts to contact you and advise you of the failed billing attempts. Notwithstanding the foregoing, Apiworx reserves the right to disconnect your Service and terminate your account if your credit card on file is declined or fails for any reason. Apiworx further reserves the right to continue to attempt charging your credit card for any outstanding Service charges and additional fees and pursue any other legal remedies available to Apiworx. We may assess an additional fee of the lesser of (a) fifty dollars (\$50) or (b) the highest amount allowed by law for any credit card chargeback or check returned for nonpayment.

11.2 Time is of the essence for payment. Payments not made within the appropriate time period will be subject to late charges equal to the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law.

Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of Apiworx's rights to collect the full amount due. You are responsible for paying all personal property, sales, use and other taxes (excluding taxes based upon Apiworx's net income) and license and registration fees and other assessments or charges levied or imposed by any governmental body or agency as a result of the execution or performance of this Agreement, including your receipt of the Services. On notice of not less than sixty (60) days, we may, in our discretion, adjust any or all fees for the Services. You may terminate this Agreement on written notice to us within thirty (30) days of its receipt of our notice to adjust the fees; provided, however, that if you fail to object to the adjustment in writing within the foregoing thirty (30) day period then you will be deemed to have agreed to the fee adjustment.

11.3 You must dispute any charges for the Services in writing to Apiworx customer support within thirty (30) days of the date of the charge by Apiworx. If you do not provide a written statement explaining in reasonable detail your reasons for disputing the charge within such time period, you hereby irrevocably waive any objection and further recourse with regard to such charges.

#### **YOUR WARRANTIES**

You represent and warrant that (i) you have full power, capacity, and authority to enter into this Agreement and to grant the license in Section 6 (Proprietary Rights); and (ii) your use of the Services will be in compliance with this Agreement and all applicable local, state, and federal laws and regulations.

#### **INDEMNIFICATION**

To the maximum extent permitted by applicable law, you will defend, indemnify and hold harmless, individually and collectively, Apiworx, its affiliates, resellers, officers, directors, employees, shareholders, agents and third-party

providers who furnish goods or services to you in connection with the Services (the "Indemnified Parties") from any and all claims, actions, proceedings, losses (including loss of profits, revenue and goodwill), deficiencies, damages, fines, penalties, liabilities, costs, and expenses (including but not limited to reasonable attorneys' fees, dispute resolution expenses and all related costs and expenses) incurred by them as a result of any claim, judgment, or adjudication related to or arising from any acts or omissions by you or any third party acting upon your permission, knowledge, authority or direction arising from or related to: (i) use of the Services; (ii) breach of any of your obligations, representations, or warranties in this Agreement; (iii) any negligent acts, omissions to act or willful misconduct; (iv) failure to comply with applicable laws, code, ordinances and regulations, or (v) the misappropriation, breach, violation, or infringement of any right, title or interest of any third party in your Customer Content, including but not limited to, contractual rights, intellectual property rights (including patent, trademark, copyright, and trade secret rights), rights of privacy, and rights of publicity and personality.

#### **SUSPENSION OR TERMINATION OF SERVICES AND REMOVAL OF CUSTOMER CONTENT**

We may, in our sole discretion, suspend your access to the Services for any of the following reasons (i) to prevent disruption of or damages to, or degradation of, the Services and our systems; (ii) to comply with any law, regulation, court order, or other governmental request; (iii) to otherwise protect us from potential legal liability; (iv) to remove Customer Content that is illegal, offensive, or otherwise inappropriate or in violation of a third party's intellectual property rights, in our sole discretion, or (v) in the event an invoice remains unpaid for more than forty-five (45) or more days from the invoice date. We will restore access to the Services as soon as the event giving rise to suspension has been resolved. This Section will not be construed as imposing any obligation or duty on us to monitor use of the Services.

#### **CONFIDENTIALITY**

15.1 "Confidential Information" means all information or material which (i) is clearly marked confidential, (ii) gives a party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (iii) which from the relevant circumstances should reasonably be assumed to be confidential and proprietary. Each party's Confidential Information will remain the sole and exclusive property of the disclosing party. Confidential Information includes, but is not limited to, the Services, Customer Content, trade secrets, know-how, software, source code, techniques, future product plans, marketing plans, financial information, business plans, customers, inventions, discoveries, improvements, and research and development data. Neither party will have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other



than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party without restriction or lawfully received by the receiving party from a third party without nondisclosure obligations; or (iii) is independently developed by the receiving party without the use or reference to the disclosing party's Confidential Information. A receiving party may disclose Confidential Information pursuant to a court order, judgment or as otherwise required by law, provided that the receiving party promptly delivers written notice of disclosure to the disclosing party to allow the disclosing party to seek a protective order.

15.2 Treatment of Confidential Information. Each party recognizes the importance of the other's Confidential Information. In particular, each party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into this Agreement without assurance that the information will be protected as provided in this Section 15 and elsewhere in this Agreement. Accordingly, each party agrees as follows: (a) For a period of two (2) years from receipt of Confidential Information from the other party hereunder, the receiving party shall keep the Confidential Information confidential and use the same degree of care that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care, to prevent the unauthorized use or the disclosure of such Confidential Information to third parties; (b) Each party will use and permit use of Confidential Information solely as permitted under this Agreement; and (c) Each party may disclose or provide access to its responsible employees, agents, independent contractors, advisors or lawyers on a need-to-know basis, or as otherwise permitted under this Agreement, and may make copies, of Confidential Information only to the extent permitted under this Agreement.

15.3 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, and therefore, that upon any such breach or any threat thereof, each party will be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies either of them might have at law or equity.

#### **DISCLAIMER OF WARRANTIES**

16.1 The services are provided "as is" and "as-available," with all faults, and without warranty of any kind. Apiworx and its vendors and licensors disclaim all warranties, express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, quiet enjoyment, quality of information, or title/non-infringement, whether said warranty arises under provisions of any law of the united states or any state thereof or any other country. all such warranties are hereby specifically disclaimed. you expressly agree and acknowledge that use of services, is at your sole risk. Apiworx expressly disclaims any warranty that the services

are appropriate for high-risk or other activities where failure of the service could result in serious harm to persons, business or property. Apiworx makes no warranty that the services will meet your requirements, or that the services will be uninterrupted, timely, secure, error free or that any defects in the services will be corrected. Apiworx is not responsible for comments or information lost or misdirected due to interruptions or fluctuations in the services or the internet in general. Apiworx is not responsible for the content or functionality of any third party network used in connection with the services. Apiworx does not warrant the accuracy or reliability of the results obtained through use of the services or any data or information downloaded or otherwise obtained or acquired through the use of the services. you acknowledge that any data or information downloaded or otherwise obtained or acquired through the use of the services are at your sole risk and discretion, and Apiworx will not be liable or responsible for any damage caused by the use of the services to you, your business or your property.

16.2 No oral or written information or advice given by Apiworx or its affiliates, employees, resellers, partners or its authorized representatives will create a warranty or in any way increase the scope of Apiworx 's obligations hereunder.

16.3 The services may be used to access and transfer information over the internet. you acknowledge and agree that Apiworx and its vendors and licensors do not operate or control the internet and that: (i) viruses, worms, trojan horses, or other undesirable data or software; or (ii) unauthorized users (e.g., hackers) may attempt to obtain access to and damage the customer content, reports, web-sites, computers, or networks. under no circumstances shall Apiworx be responsible for those activities.

16.4 Some jurisdictions do not permit the disclaimer of certain implied warranties, so certain of the foregoing disclaimers may not apply to you. to the extent that Apiworx cannot disclaim any such warranty as a matter of applicable law, the scope and duration of such warranty will be the maximum permitted under such law.

#### **LIMITATION OF LIABILITY AND DAMAGES**

In no event shall Apiworx or its vendors and licensors be liable to you or any third party, including but not limited to your employees, agents, independent contractors, customers, or contracting parties, for any loss of profits, business, data, or other incidental, consequential, indirect or special loss or damage, including exemplary and punitive, of any kind or nature resulting from or arising out of this agreement whether arising under contract, warranty, tort (including negligence or strict liability), or any other theory of liability, including use of the services even if Apiworx has been advised in advance of the possibility of such damages or such damages could have reasonably been foreseen by Apiworx. the total liability of Apiworx and its vendors and licensors to you or any third party arising out of this agreement or use of the services in connection with



any claim or type of damage (whether in contract or tort) will not exceed the total fees you paid, if any, during the one (1) month immediately preceding the date that the event giving rise to the liability first occurred. this limitation of liability reflects the allocation of risk between the parties and will apply even if the express warranties provided above fail of their essential purpose. the limitations specified in this section will survive and apply in any and all circumstances. some jurisdictions do not allow certain limitations of liability, so certain of the foregoing limitations may not apply to you.

#### **TERM AND TERMINATION**

Unless otherwise agreed and signed by the parties in writing, this is quarter to quarter agreement (the “Term”), terminable by either party for any reason or no reason upon delivery of ninety (90) days prior written notice to the other party. In the event you elect not to renew your subscription, any prepaid fees will not be refunded. Your license to use the Services is provided to you during the Term of this Agreement only and will immediately expire upon termination of this Agreement.

#### **GOVERNMENT RESTRICTIONS**

Any software or other programming provided by us in connection with this Agreement is commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of the United States Department of Defense or any component thereof, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

#### **USA PATRIOT ACT NOTICE**

The U.S. federal USA Patriot Act (“USA Patriot Act”) provides generally for the operator of a communication host and law enforcement to be able to monitor any content, upon request of the operator. We anticipate fully complying with our obligations, and availing ourselves of all rights under the USA Patriot Act.

#### **FORCE MAJEURE**

Except for the payment of fees, as described in Section 11 (Billing and Payment) of this Agreement, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications

failures, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions.

#### **DISPUTE RESOLUTION AND OPTIONAL ARBITRATION**

22.1 In the event of any dispute, claim, question, or disagreement between you and Apiworx (“Dispute”), you and Apiworx shall first use reasonable best efforts to settle the dispute, claim, question, or disagreement. The parties agree to each have an appointed representative consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. Neither you nor Apiworx shall file or pursue any Disputes in any court, administrative, arbitral, or other adjudicative body prior to or during the engagement of such consultations and negotiations.

22.2 Notwithstanding the adjudication requirement above, for any Disputes involving ten thousand dollars (\$10,000) or less, either party may choose to resolve such Dispute through binding, non-appearance-based arbitration (i.e., arbitration conducted online, through written filings, and/or via teleconference). Such arbitration shall be conducted through an established alternative dispute resolution provider mutually agreed upon by the parties, and any judgment rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator’s decision shall be final and legally binding.

22.3 In the event of any litigation (including arbitration) between you and Apiworx, the non-prevailing party shall reimburse the prevailing party for all reasonable and documented attorneys’ fees, costs, and expenses relating to the Dispute.

#### **GENERAL**

23.1 This Agreement provides the entire agreement between the parties and supersedes all prior or contemporaneous understandings regarding such subject matter. Except as provided below, this Agreement may not be amended without a writing signed by both parties. We may, at any time in our sole discretion change the terms of this Agreement. Any changes will be posted on our Website. In addition, we may also send you a notice about the amended terms via email. You agree to carefully read and review each such e-mail notice or electronic notice from Apiworx fully regarding any such notices of changes to your account. If you do not accept the terms of any modification(s) to this Agreement, your only recourse is to terminate this Agreement by sending a termination notice us before the effective date of the amendments. The termination will be effective on the date we receive the notice. The most current version of the Agreement will be available on our Website and will supersede all previous versions of the Agreement. Your continued use of the Services will constitute your acceptance of the changes.



23.2 This Agreement will be construed according to, and the rights of the parties will be governed by, the law of the State of Texas, without reference to its conflict of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or your sign up or use of the Services. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the federal or state courts located in Dallas, Texas, USA. You consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. You further agree not to contest that venue in such courts are improper or inconvenient, and irrevocably waive any right that You may have to assert that such forum is not convenient or that such court lacks jurisdiction.

23.3 No action, regardless of form, arising out of this Agreement, may be brought by either party more than one (1) year after the cause of action has arisen.

23.4 Nothing in this Agreement shall be deemed or construed to constitute or create employment, partnership, association, joint venture, agency, or fiduciary relationship between the parties hereto.

23.5 You agree and acknowledge that any breach of the provisions regarding intellectual property ownership contained in this Agreement shall cause Apiworx irreparable harm, and Apiworx may obtain injunctive relief and seek all other remedies available in law and in equity.

23.6 The section titles in this Agreement are for convenience only and have no legal or contractual effect. If any of the provisions of this Agreement are found or deemed by a court to be invalid or unenforceable, they will be severable from the remainder of this Agreement and will not cause the invalidity or unenforceability of the remainder of this Agreement.

23.7 Apiworx may assign this Agreement and/or any of its rights or obligations herein in its sole discretion. You may not assign this Agreement, in whole or part, or any of your rights or obligations under this Agreement without the prior written consent of Apiworx. Any purported transfer or assignment in violation of this section is null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties, their successors, permitted assigns, and legal representatives.

23.8 Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement.

23.9 The following provisions will survive termination or expiration of this Agreement: 6 (Proprietary Rights), 13 (Indemnification), 15 (Confidentiality), 16 (Disclaimer of Warranties), 17 (Limitation of Liability and Damages), 18 (Termination), and 23 (General Provisions).

23.10 This Agreement may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance will be deemed binding between us. Neither of us will contest the validity or enforceability of this Agreement and any related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form.

23.11 Notices to you shall be effective on the date sent to your registered electronic mail address when sent by email or, the earlier of (i) the confirmed delivery date if sent by courier or express shipping or (ii) three (3) days following the date deposited in regular United States Mail, postage prepaid, addressed to the current address on your account. Notices to Apiworx may be sent to the addresses provided in Section 24 (Contact Information) of this Agreement.

23.12 This electronic document and any other electronic documents, policies, and guidelines incorporated herein will be: (1) deemed for all purposes to be a "writing" or "in writing," and to comply with all statutory, contractual, and other legal requirements for a writing; (2) legally enforceable as a signed writing as against the parties subject to the electronic documents; and (3) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Electronic documents introduced as evidence in any judicial, arbitration, mediation, or administrative proceeding will, if established and maintained in the ordinary course of business, be admissible to the same extent as business records in written form that are similarly established and maintained.

23.13 Under California Civil Code Section 1789.3, California users of the Service acknowledge receipt of the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at Department of Consumer Affairs, Division of Consumer Services, Attn: Complaints Assistance Unit, 1625 North Market Blvd, Suite N112, Sacramento, California 95834, or by telephone at (800) 952-5210.



## **CONTACT INFORMATION**

Feel free to contact us for any reason, including a request to be added to or taken off an email list, or if you have any questions or concerns. Please provide your company's name in addition to your name and title.

### **BY POSTAL MAIL**

Apiworx, LLC  
1919 McKinney  
Dallas, TX 75201

### **BY EMAIL**

Contact@Apiworx.com