

## END USER LICENCE AGREEMENT (EULA)

### END-USER LICENSE AGREEMENT

This End-User License Agreement (the "Agreement") is a binding contract between You and Vendor (as defined below). PLEASE READ THE TERMS AND CONDITIONS OF THE AGREEMENT CAREFULLY BEFORE INSTALLING, DOWNLOADING, ACCESSING OR USING THE SOFTWARE SYSTEM.

(A) YOU ARE LICENSED TO USE THE SOFTWARE SYSTEM ONLY IF YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT SET FORTH BELOW.

(B) READ THIS AGREEMENT CAREFULLY. YOU MAY INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT BY CLICKING ON THE [ACCEPT] BUTTON BELOW, OR BY INSTALLING, DOWNLOADING, ACCESSING OR USING THE SOFTWARE SYSTEM OR ANY PART THEREOF. IN DOING SO YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY AND TERMINATION PROVISIONS, AND YOU AGREE THAT THIS AGREEMENT IS AS BINDING AND ENFORCEABLE AS ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

(C) IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK ON THE [DECLINE] BUTTON BELOW IN WHICH CASE YOU WILL NOT BE PERMITTED TO, AND YOU AGREE NOT TO, INSTALL, DOWNLOAD, ACCESS OR USE THE SOFTWARE SYSTEM.

**1. DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, the following terms, when used in this Agreement, shall have the following meanings:

1.1 "You" means the single end-user customer or entity entering into this Agreement.

1.2 "Vendor" means Apex Supply Chain Technologies, a Division of Apex Industrial Technologies LLC, an Ohio limited liability company having its primary place of business at 4393 Digital Way, Mason, Ohio 45040 USA.

1.3 "Client Software" means that portion of the Apex Trajectory Enterprise Technology Platform™ (Apex Trajectory Software) which resides on a Device, including any instructions or statements in machine readable form, and related documentation, user manuals and listings, training documentation, whether in machine-readable, human-readable form or printed form, and all copies of the foregoing, and any supplements, updates or fixes thereto, as provided by Vendor to You.

1.4 "Field of Use" means the field for which a Device and the Software System have been authorised by Vendor in a separate supply agreement between Vendor and You or between Vendor and its customer, or otherwise.

1.5 "Software Service" means the Apex Trajectory Software online service and related documentation, user manuals and listings, training documentation, whether in machine-readable, human-readable form or printed form, and all copies of the foregoing, and any supplements, updates or fixes thereto.

1.6 "Software System" means the Client Software and the Software Service.

1.7 "Device" means an internet-based remote and automated industrial vending and point-of-work technology provided by Vendor to You which includes, utilizes or interacts with, or is configured to utilize or interact with, the Software System, and which is properly in Your possession and control.

1.8 "Authorised Server" means a server and/or computer system that is remote from You and Your Device, is controlled by Vendor, and which hosts the Software Service.

## **2. LICENSE GRANT AND RESTRICTIONS.**

2.1 Limited License Grant. So long as You are in compliance with all terms and conditions of this Agreement, You are granted a limited, non-exclusive, non-sublicensable, personal, non-assignable, non-transferable right to install and use the Client Software on a Device solely for Your internal business purposes. In addition, so long as You are in compliance with all terms and conditions of this Agreement, You are granted a limited, non-exclusive, non-sublicensable, personal, non-assignable, non-transferable right and license to use the Software Service in conjunction with a Device via an Authorised Server solely for internal business purposes. You agree and acknowledge that the Client Software and Software Services shall be used only in conjunction with a Device purchased, leased or otherwise properly commercially acquired from Vendor.

2.2 Payment. You shall be required to pay Vendor for use of the Client Software and the Software Service in accordance with a payment schedule agreed to by You and Vendor, which is incorporated herein. Your failure to make timely payments in accordance with such payment schedule shall result in a revocation of the rights and licenses granted in Section 2.1 and Vendor shall have the right to terminate this Agreement as specified in Article 3.

2.3 Server Access. Vendor shall provide You reasonable access to an Authorised Server via internet connectivity. Vendor reserves the right to change the identity, equipment and/or configuration of the Authorised Server at any time. You shall provide and maintain an ISP account with a PPTP internet connection for communicating with the Authorised Server. Vendor will provide You all necessary information to access the Software Service on an Authorised Server via the Client Software, including internet address and/or portal information, username and password information which shall be considered confidential information and treated as such by You.

2.4 Your Restrictions. You hereby agree that You shall not:

- (a) use a Device or the Software System outside the Field of Use or for any purpose other than the operation of Your business in its ordinary course;
- (b) make any copies of, or otherwise reproduce or distribute, the Client Software;
- (c) use the Software System otherwise than in accordance with the express terms of this Agreement;
- (d) permit any third party to use or access the Software System in any way whatsoever without Vendor's prior written consent, or use the Software System for the benefit of any third party, or use the Software System in any manner to provide service bureau, leasing, time-sharing or other computer services to third parties, or publicly display the Software System;
- (e) adapt, modify, decompile, disassemble, decrypt, translate, extract, or otherwise reverse engineer the Software System or permit any third party to do so unless local law gives You the right to reduce the Software System to human readable form (whether by reverse engineering, decompilation or disassembly) in order to obtain information necessary to ensure interoperability of the Software System with independently created software, in which case You shall first notify Vendor of the information reasonably required in this respect (Vendor shall have the right to impose reasonable conditions such as a reasonable fee for providing such information to You), and then You shall receive or obtain only as much information as is necessary to comply with such local law;
- (f) create derivative works based upon any of the Software System;
- (g) export or seek to export all or part of the Software System;
- (h) attempt to circumvent any technological measures that control or restrict access to or use of any portion of the Software System;
- (i) share the internet address and/or portal information of an Authorised Server with any third party, or share Your username and password information with any third party;
- (j) request, permit or authorise anyone, other than Vendor or its authorised representatives, to provide any maintenance or support services with respect to the Software System;
- (k) remove any copyright, proprietary or attribution notices from the Software System; or

(l) use the Software System other than in conjunction with a Device purchased, leased or otherwise properly commercially acquired from Vendor.

2.5 Your Obligations. You hereby agree that You will:

- (a) institute and maintain appropriate security measures to safeguard the Client Software and access to the Software Services, or any other information designated by Vendor as confidential, from access or use by any third party;
- (b) retain the Client Software and any authorised copies thereof in Your possession under Your effective control;
- (c) ensure that all copyright, proprietary or attribution rights notices on the Client Software are retained thereon and reproduced and applied to any authorised copies of the same;
- (d) install, maintain, and properly use reasonable security features such as firewalls and security systems to protect the Software System;
- (e) notify Vendor immediately if You become aware of any unauthorised use of the whole or any part of the Software System; and
- (f) indemnify, defend and hold Vendor harmless against all damages, expenses (including, without, limitation attorneys' fees), costs, judgments and losses that result from Your unauthorised use of or modification to the Software System.

2.6 Vendor Replacement of Software. Vendor shall have the right to replace or change all or any part of the Software System so long as the revised Software System provides at least substantially the same functionality as the Software System originally provided to or accessed by You.

2.7 Selection and Nature of Software System. You accept full responsibility for the selection of the Software System to achieve its intended results. You acknowledge that data collected and provided by the Software System is subject to the possibility of machine errors, omissions, delays and losses, including inadvertent loss of data or damage to media that may give rise to loss or damage. You agree that Vendor is not liable for any such selection, errors, omissions, delays or losses. You also agree to comply with all applicable laws pertaining to the use, transmission and disclosure of data.

2.8 Data Protection. Some of the data that Vendor collects and stores as a result of You using the Software System may be personal data as defined in the Data Protection Act 2018 ("DPA") and, to that extent, Vendor shall comply with the DPA as if it were a data controller under the DPA.

2.9 Other Services Unless specified otherwise in a written agreement between You and Vendor, You agree and acknowledge that Vendor shall not be required to provide any support, maintenance, data management, repair, installation, configuration or re-configuration services for the Software System or the Devices. In addition, except for any modifications required under the Limited Warranty in accordance with Section 5.1, Vendor shall not be required to provide any updates, error corrections, enhancements, or new releases of the Software System to You. Vendor may choose in its sole discretion to offer such updates, error corrections, enhancement, or new releases to You, possibly at an additional fee to be determined by Vendor. If such updates, error corrections, enhancement or new releases are properly installed, downloaded, accessed or used by You, such updates, error corrections, enhancements or new releases shall be considered to be included in the Software System and shall be subject to the terms and conditions of this Agreement.

### **3. TERM AND TERMINATION**

3.1 Vendor Termination. Vendor may terminate this Agreement and the licences and rights granted hereunder to You if:

- (a) You are in breach of any material term of this Agreement including, without limitation, Sections 2.2, 2.3, 2.4 or 2.5; or
- (b) You fail to pay any amounts owed to Vendor for the supply, support or maintenance of the Software System, or any amounts owed to Vendor under any agreement related to the Software System or the Devices (or parts, services, or accessories thereof).

3.2 Your Termination. You may terminate this Agreement at any time provided You provide written notice to Vendor, immediately and on a going forward basis cease all downloading, installing, access and use of the Software System, and return to Vendor the Device upon which the Client Software resides.

3.3 Effects of Termination. Upon termination of this Agreement for any reason:

- (a) all rights, privileges and licenses granted to You under this Agreement shall cease;
- (b) You shall immediately and on a going forward basis cease all downloading, installing, access and use of the Software System;
- (c) You shall immediately pay to Vendor any amounts owed to Vendor for the supply, support or maintenance of the Software System or any amounts owed to Vendor under any agreement related to the Software System or the Devices (or parts, services, or accessories thereof);
- (d) Vendor shall no longer be obligated to provide any support or maintenance of the Software System under this Agreement or any other agreement between You and Vendor;
- (e) Vendor shall be permitted to de-activate or block any access to the Authorised Server to prevent Your further downloading, installing, access and use of the Software System; and (f) Any termination of this Agreement shall not affect the continuing obligations of the parties described in Sections 2.2, 2.4, 2.5, 2.7, 2.8, 3.3, 4.1, 5.5, 5.6, 6.1, 6.2 and 7.1- 7.10, which shall survive termination

#### **4. OWNERSHIP.**

4.1 Your Ownership Acknowledgement. You agree and acknowledge that Vendor owns all right, title and interest in and to the Software System. The Software System may contain structures, data, concepts formulas, algorithms and code, which are the valuable trade secrets owned by Vendor, and is also protected by copyright, trade secret laws, moral rights provisions and international treaty provisions. Vendor reserves all rights not expressly granted to You in this Agreement.

#### **5. LIMITED WARRANTY AND DISCLAIMERS OF WARRANTY.**

5.1 Limited Warranty. Vendor warrants that the Software System will perform substantially in accordance with Vendor's then-current specifications therefor as published by Vendor for a period of thirty (30) days ("Warranty Period") from the date of first download, installation, access or use by You (hereinafter the "Limited Warranty").

5.2 Limited Nature of Warranty. The Limited Warranty is void if the failure of the Software System to meet Vendor's then-current specifications is due to software or hardware products not provided by Vendor, Your failure to properly maintain Your site or equipment on which the Software System is installed, used or accessed, or Your misuse, improper use or unauthorised modification of the Software System.

5.3 IMPLIED WARRANTY OR CONDITION. IF AN IMPLIED WARRANTY OR CONDITION IS REATED BY YOUR JURISDICTION AND APPLICABLE LAW PROHIBITS DISCLAIMER OF SUCH AN IMPLIED WARRANTY OR CONDITION, YOU SHALL ALSO HAVE SUCH AN IMPLIED WARRANTY OR CONDITION, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE THIRTY DAY PERIOD OF THIS LIMITED WARRANTY. FOR ANY DEFECTS DISCOVERED AFTER THE THIRTY DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND.

5.4 SUPPLEMENT OR UPDATES. ANY SUPPLEMENTS OR UPDATES TO THE SOFTWARE SYSTEM, INCLUDING WITHOUT LIMITATION, ANY (IF ANY) FIXES PROVIDED TO YOU AFTER THE EXPIRATION OF THE THIRTY DAY LIMITED WARRANTY PERIOD ARE NOT COVERED BY ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY.

5.5 SOLE WARRANTY. THE LIMITED WARRANTY SET FORTH ABOVE IS THE ONLY WARRANTY MADE TO YOU AND IS PROVIDED IN LIEU OF ANY OTHER EXPRESS WARRANTIES OR SIMILAR OBLIGATIONS (IF ANY) CREATED BY ANY ADVERTISING, DOCUMENTATION, PACKAGING, OR OTHER COMMUNICATIONS. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR PROVIDES THE SOFTWARE SYSTEM "AS IS" AND WITH ANY AND ALL FAULTS, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OR OF LACK OF VIRUSES.

5.6 NO OTHER WARRANTIES. VENDOR PROVIDES NO WARRANTIES OR CONDITIONS OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION OR NON- INFRINGEMENT.

#### **6. REMEDY FOR BREACH OF WARRANTY.**

6.1 Exclusive Remedy. Vendor's entire liability and Your exclusive remedy for any breach of the Limited Warranty and for any other breach of the Agreement by Vendor or for any other liability relating to the Software System on behalf of Vendor shall be, at Vendor's option, limited to one of the following: (a) return of the amount paid (if any) for the Software System; or (b) repair or replacement of the Software System that does not meet the Limited Warranty or causes such breach. You will receive the remedy elected by Vendor without charge, except that You are responsible for any expenses that Vendor may reasonably incur in delivering the elected remedy to You. Any replacement Software System provided under the Limited Warranty will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer, and Vendor will use commercially reasonable efforts to provide the remedy to You within a commercially reasonable time of Your compliance with Vendor's warranty remedy procedures.

6.2 NO OTHER DAMAGES. EXCEPT FOR ANY REFUND ELECTED BY VENDOR, YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, IF THE SOFTWARE SYSTEM DOES NOT MEET VENDOR'S LIMITED WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL VENDOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR LOSS OF PRIVACY, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE SYSTEM OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF VENDOR, AND EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

## **7. MISCELLANEOUS.**

7.1 **Trademarks.** APEX, APEX INDUSTRIAL TECHNOLOGY, APEX SUPPLY CHAIN TECHNOLOGY, APEX TRAJECTORY, CONNECT N' GO, SKYHOOK, EDGE C3i HUB, EDGE 5000, AUTO STORE, TRAJECTORY, TRAJECTORY ENTERPRISE TECHNOLOGY PLATFORM APPLICATION PLATFORM, MEGASTORE, APEX TOOL NINJA, APEX CONNECT N' GO TECHNOLOGY as well as other marks, are the trademarks and/or tradenames of Vendor and You are not granted any rights to use such trademarks or tradenames except to the extent such trademarks or tradenames are placed on Devices or the Software System by Vendor.

7.2 **Relationship of Parties.** Nothing contained in this Agreement is intended to implicitly, or is to be construed to, constitute a partnership in the legal sense. No party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party.

7.3 **Force Majeure.** Neither party will be liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control and without its fault or negligence, including, without limitation, acts of God, natural catastrophes or governmental acts, interruption of power or of other essential services or supplies.

**7.4 No Waiver.** No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement contained herein.

**7.5 Entire Agreement.** This Agreement constitutes the entire agreement between the parties, and there are no understandings or agreements relative hereto other than those that are expressed herein. No change, amendment, waiver, or discharge hereof shall be valid unless in writing and properly executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**7.6 Severability Enforcement.** The invalidity of any portion of this Agreement shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and each party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

**7.7 Parties Benefited; Assignment.** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto; their successors and assigns, but You may not assign this Agreement or any rights hereunder without the express written consent of Vendor, and any such assignment or attempted assignment without Vendor's consent shall be void. Vendor may freely assign its rights and delegate its duties under this Agreement without Your consent.

**7.8 Neutral Interpretation.** This Agreement shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party based on a contention that the Agreement was drafted by one of the parties.

**7.9 Applicable Law.** This Agreement is governed by and shall be construed in accordance with English law.

**7.10 Jurisdiction.** You irrevocably agree to submit to the exclusive jurisdiction of the courts of England with respect to any suit, action or other proceeding commenced by You or Vendor arising out of or in connection with this Agreement (including non-contractual disputes or claims). You irrevocably and unconditionally waive any objection to the laying of venue of any such action, suit or other proceeding in the courts of England and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or other proceeding brought in any such court has been brought in an inconvenient forum.