

APTECO END USER LICENCE AGREEMENT

This Licence Agreement is between Apteco Limited ('Apteco' or in the appropriate context 'we', 'us' or 'our') and the user ('you' or in the appropriate context 'your') of the Apteco Marketing Suite software ('Software').

The copyright and intellectual property in the Software is owned by Apteco. We offer you a non-exclusive and non-transferable software licence on the terms set out in the remainder of this document. Please read these terms carefully before you proceed to install or use or copy the Software as by proceeding to install or use or copy the Software you accept all the terms and conditions of this Licence Agreement. If you do not agree with the terms and conditions of this Licence Agreement, you should discontinue installation or use of the Software and operating manuals ('Documentation') now by clicking the 'Cancel' button below.

You may not load this Software on to any computer or use it or copy it without having entered into this Licence Agreement.

If you have any doubts as to the minimum computer configuration or operating system required to run the Software, please contact us by email on info@apteco.com.

IT IS AGREED as follows:

1. DEFINITIONS

1.1 In this Licence Agreement, the following expressions have the following meanings:

Administrator Account: a named user account set up for the technical staff free of charge provided that such account is used for system management and testing only and not for any production or revenue generating purposes;

Agency Licence: a specific licence held by your organisation with explicit permission from Apteco in the Confirmation of Order to permit you to operate the Software in order to generate income through servicing third party organisations;

Agency Service: any service provided by you (and to which we have expressly consented in writing) using the Software which creates revenue for you, including but not limited to processing the data of third parties including the data of their customers;

Commencement Date: the date of your acceptance of this Licence Agreement;

Confirmation of Order: the specific licence restrictions applicable to this Licence Agreement and made available by Apteco or the Reseller;

Data Owner Licence: a specific licence held by your organisation with explicit permission from Apteco in the Confirmation of Order to permit you to operate the Software to facilitate the sale of data owned by you;

Group Licence: a specific licence held by your organisation with explicit permission from Apteco in the Confirmation of Order to permit you to operate the Software as part of a group of companies with common majority ownership by a single ultimate parent company;

Initial Term: the term set out in the Confirmation of Order;

Intellectual Property Rights: any and all intellectual and industrial property rights in any part of the world including rights in or in connection with:

- (a) inventions and patents (including supplementary protection certificates);
- (b) copyright (including the rights to secure copyright renewals and extensions of copyright, copyright not yet in existence but that comes into existence in the future and all other rights of a like nature by law in force in any part of the World) and moral rights;
- (c) Trade Marks, service marks and business and / or trade names;
- (d) design rights and topography rights;
- (e) database rights,

together with all other rights of a similar or corresponding character or nature whether or not now existing or that come into existence in the future and whether or not registered or registrable and includes all applications and rights to apply for registration of such rights and includes all renewals and extensions and (without limitation) all rights of action and remedies in relation to past infringements;

Licence Fee: the fee payable by you to our Reseller in respect of the Software;

Reseller: the reseller authorised by us, if any, to market, promote and distribute the Software to you;

Software Licence Key: a computer file containing an encrypted key representing the current paid period of this Licence Agreement and the software configuration specified in the Confirmation of Order and required for operation of the Software;

Trade Marks: the registered and unregistered trade marks (including any applications for the same) owned by or licensed to us and used by us in relation to the Software;

User Account: a named user account licensed to use the Software and Documentation as set out in the Confirmation of Order;

Warranty Period: the three month warranty period in relation to the Software commencing on the date of your first live access to the Software in accordance with the terms of the Licence Agreement;

Year: the period of twelve months commencing on the Commencement Date or any anniversary thereof.

2. RIGHT TO USE THE SOFTWARE AND DOCUMENTATION

- 2.1 In consideration of you agreeing to abide by the terms of this Licence Agreement, we hereby grant to you a non-exclusive, non-transferable licence to use the Software and the Documentation subject to the terms set out in the Confirmation of Order and in accordance with the terms of this Licence Agreement.
- 2.2 You may:
- 2.2.1 install, or commission others to install the Software on any number of computer(s).
 - 2.2.2 additionally install the Software on further computer(s) for configuration testing and backup purposes;
 - 2.2.3 create user accounts for named individuals provided that the number of enabled accounts may at no time exceed the total number of user licences that you have purchased from us as set out in the Confirmation of Order;
 - 2.2.4 create an Administrator Account for use by the technical staff if you are operating the server components of the software;
 - 2.2.5 create databases using the Software up to the permitted size of database as set out in the Confirmation of Order;
 - 2.2.6 subject to clause 2.3.5, receive and use any free supplementary release or update of the Software incorporating "patches" and corrections of errors as may be provided by us from time to time;
 - 2.2.7 use any Documentation in support of the use permitted under clause 2.1;
 - 2.2.8 use the Software and Documentation for processing data owned by or licensed to you, or:
 - (a) in the event you have a Group Licence, for processing data controlled by any majority owned subsidiary within your group;
 - (b) in the event that your organisation has an Agency Licence, provide Agency Services to third party clients, for processing data owned by those third parties or
 - (c) in the event that your organisation has a Data Owner Licence, provide third parties with access to your data assets, so long as the users are licensed
 - 2.2.9 configure the presentation of the Software using customisation parameters documented by us provided always that our copyright notice is reproduced and included on any such copies of the Software and Documentation used by you.
- 2.3 You undertake not to use, reproduce or deal in the Software and Documentation in any way except as expressly set out in this Licence Agreement and you further undertake:

- 2.3.1 not to rent, lease, sub-license, loan, copy (except as expressly provided in this Licence Agreement), transfer, modify, adapt, merge, translate, reverse engineer, de-compile, disassemble or create derivative works based on the whole or any part of the Software or the Documentation without our written permission;
 - 2.3.2 not to remove or hide copyright and “powered by” messages included in the Software and Documentation;
 - 2.3.3 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
 - 2.3.4 to supervise and control use of the Software and ensure that the Software is used only by users having a User Account within the total as specified in the Confirmation of Order and in accordance with the terms of this Licence Agreement;
 - 2.3.5 to replace the current version of the Software with any priority updates (as determined by us from time to time) promptly upon receipt of notice that such a priority update is available
 - 2.3.6 not to provide, or otherwise make available, the Software in any form, in whole or in part (including, but not limited to, program listings, object code and source code) to any person not having a User Account, Administrator Account or Temporary Cover User Account without our prior written consent; and
 - 2.3.7 to comply at all times with the specific limitations in the Confirmation of Order.
- 2.4 To the extent that English law gives you the right to decompile the Software in order to obtain information necessary to render the Software interoperable with other computer programs, we undertake to make that information readily available to you where you have the right to such information. We shall have the right to impose reasonable conditions such as a reasonable fee for doing so. In order to ensure that you receive the appropriate information, you must first give us sufficient details of your objectives and the other software concerned. Requests for the appropriate information should be made to us at the address shown at the bottom of this document.

3. **USAGE DATA**

The software may collect and or upload to Apteco usage data for the purposes of confirming the use of the software is in accordance with the licence and for general application usage analytics. No personally identifiable information is shared with or transferred to Apteco. .

4. **DELIVERY OF UPDATES**

Subject to clause 7, we will from time to time make software updates available which you may opt to receive. Although you are under no obligation to accept updates, we recommend that you do accept updates. Notwithstanding the foregoing, we may from time to time inform you of an update that is required to be downloaded and applied to your Software to resolve a problem. If you or your Reseller if applicable fail to download and apply the update to your

Software from the date we notify you of the update, we accept no liability whatsoever in respect of any and all losses incurred by you arising as a direct or indirect result of the problem notified and of your continued use of any prior version of the Software.

5. LICENCE RENEWAL

- 5.1 Within a reasonable time prior to the expiry of the Licence term, we will issue an invitation to renew to the Reseller where applicable or otherwise to you.
- 5.2 If you decide to renew the Licence Agreement, we will issue the Reseller where applicable and otherwise to you an updated Software Licence Key with a new expiry date.
- 5.3 If you decide not to renew the Licence Agreement, this Licence Agreement will expire and the Software shall cease to function following the expiry of the Software Licence Key.

6. WARRANTIES

- 6.1 With respect to any Software provided under this Licence Agreement, we warrant and represent to you that:
 - 6.1.1 we have full capacity and authority to grant the rights specified in this Licence Agreement;
 - 6.1.2 the Software will perform substantially as described in the Documentation for the Warranty Period; and
 - 6.1.3 we will use reasonable and up-to-date anti-virus software to test the Software prior to delivery for viruses or other contaminants (including, without limitation, worms, logic bombs, Trojan horses or self-propagating programs).
- 6.2 With respect to any Level 2 Support services provided by us under this Licence Agreement, we warrant and undertake to you that we will perform such services with reasonable care and skill.
- 6.3 You acknowledge that the Software has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet your requirements. Accordingly, we do not warrant that the Software will meet your requirements.
- 6.4 You are solely responsible for your use of the Software and you are responsible for running your own appropriate virus scans or checks on the Software from time to time.
- 6.5 We do not warrant that the Software will be uninterrupted or free of bugs or errors or that defects in the Software will be corrected. You agree that any such interruptions or the existence of any such bugs or errors shall not constitute a breach of this Licence Agreement.
- 6.6 If you notify us in writing within the Warranty Period of any programming errors in the Software which significantly affect the functionality of the Software and which are

demonstrable and provable by you, provided that such defect or fault does not result from you having amended the Software or used it in contravention of the terms of this Licence Agreement, we shall endeavour to either (at our sole option) repair or replace the Software within a reasonable time provided that you make available all information that may be necessary to assist us in resolving the defect or fault, including sufficient information to enable us to recreate the defect or fault, or provide or authorise a refund (against return of the Software and the Documentation).

7. **CHANGES TO THE SOFTWARE**

During the term of this Licence Agreement but subject to all payments due from you having been paid when they fall due, we or our Reseller shall from time to time advise you of updates or upgrades or other material enhancements to the Software. There will be no charge for updates or upgrades within the licence configuration defined in the Confirmation of Order, but we reserve the right to introduce material enhancements inside or outside this licence configuration and to charge for these.

8. **INTELLECTUAL PROPERTY RIGHTS**

- 8.1 We retain exclusive ownership and control of the Intellectual Property Rights in the Software and the Documentation.
- 8.2 All Intellectual Property Rights created, developed or that come into existence in connection with the Software including all modifications, enhancements, releases, upgrades and improvements thereto shall vest in and be held by us upon creation and you agree to execute (at our expense) such confirmations of ownership, assignments or other documents to effect such ownership as may be required.
- 8.3 You shall notify us as soon as reasonably possible of any infringement or suspected infringement of any of our Intellectual Property Rights in the Software and the Documentation and shall help us, and where necessary, our Reseller, to take steps at our expense to defend our Intellectual Property Rights therein.
- 8.4 We shall decide in our absolute discretion the steps to be taken to prevent or terminate any such infringement including the commencement of legal proceedings where necessary.
- 8.5 We shall have sole control over those steps or actions as referred to in clauses 8.3 and 8.4 as we shall deem necessary and you shall provide such help to us as we reasonably request including the provision of any documents and information.
- 8.6 You shall not be entitled to use the Trade Marks except in so far as such use is incidental to your use of the Software. All other use of the Trade Marks is expressly prohibited.
- 8.7 You shall not alter, obscure, remove, interfere with or add to the Trade Marks or any markings or notices affixed to or contained in the Software and Documentation.

9. INDEMNITY

9.1 Subject to the remaining provisions of this clause 9, we shall indemnify (and keep indemnified) you from and against any loss, damage or liability, including reasonable legal costs, that may be awarded by a court of competent jurisdiction against you for, any claim or alleged or threatened claim that your use of the Materials infringes and/or has infringed the Intellectual Property Rights of any third party (hereinafter, a "Claim"). The indemnity herein does not extend to any Claim:

9.1.1 based upon infringement or alleged infringement of any Intellectual Property caused in whole or in part by the combination of the Software with other products or software not provided or approved in writing by us;

9.1.2 related to or in connection with any modification of the Software by anyone other than us or not approved in writing by us; or

9.1.3 which would have been avoided had a newer version of the Software been used and such new version had been made available online by us.

9.2 We agree to give the indemnity under clause 9.1 provided that:

9.2.1 you shall give written notice to us of any such claims or proceedings as soon as reasonably practicable upon becoming aware of such Claim or threatened Claim;

9.2.2 you shall make no admission of liability and shall give us sole authority to defend or settle such Claim at our cost and expense;

9.2.3 you shall give us all reasonable assistance in connection with such Claim at our cost and expense;

9.2.4 the Claim does not arise as a result of the use of the Software otherwise than in accordance with this Licence Agreement.

9.3 In the event of a Claim under clause 9.1, we shall be entitled at our own expense and option either to:

9.3.1 procure the right for you to continue using the Software and Documentation or the infringing part thereof;

9.3.2 make such modifications to the Software and Documentation or that infringing part so that it becomes non-infringing;

9.3.3 replace the Software and Documentation or that infringing part with non-infringing substitutes (and the provisions of this clause 9.3.3 shall apply equally to any such substitutes); or

9.3.4 in the event that clauses 9.3.1 to 9.3.3 are not commercially reasonably available, take return of the Software and terminate the right to use the Software and provide to you a pro rata refund in respect of the Licence Fee from the effective date of

termination up to the day immediately preceding the next following anniversary of the Commencement Date.

- 9.4 We may exercise our right to modify or replace all or any part of the Software and Documentation under clauses 9.3.2 and 9.3.3, provided that such modification or replacement does not cause a material diminution in performance, capacity, resilience or functionality of the Software.
- 9.5 Subject to the preceding provisions of this clause 9, we shall pay to you any settlement amounts which we authorise in respect of any claim or alleged claim.
- 9.6 This clause 9 sets out our entire liability to you in respect of the infringement of the Intellectual Property Rights of any third party.

10. **CONFIDENTIAL INFORMATION**

- 10.1 Neither party shall disclose to any person (other than with the authority of the other) any Confidential Information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the other which may come to that party's knowledge in the course of performing its duties under this Licence Agreement.
- 10.2 Nothing contained in this clause 10 shall prevent either party from disclosing such Confidential Information:
- 10.2.1 to any of its employees whose work requires the disclosure of that information;
 - 10.2.2 to any government department or other authority, court or arbitrator having statutory authority or jurisdiction to require the disclosure of that information;
 - 10.2.3 if that information is at the time of disclosure known to the public through no act or default on the part of either party.
- 10.3 Nothing in this Licence Agreement shall require either party to destroy or erase any information held on backup tapes or other archival media provided that the receiving party only uses such backup tapes or other archival media in the ordinary course of business to maintain safe copies of other information and the receiving party continues to comply with this Licence Agreement in relation to Confidential Information.

11. **SUPPORT**

- 11.1 Subject to clause 11.3 support services shall be provided by the Reseller if any or by us direct to you for the term of the Licence Agreement.
- 11.2 In the event the Reseller is unable to rectify your support issue, we may at our discretion contact you in relation to resolving your support issue or, alternatively, advise the Reseller in relation to the resolution to any support issue and the Reseller shall contact you directly.

- 11.3 In the event that you purchase a perpetual licence of the Software, you will only be entitled to receive support services if you also enter into a support services agreement, which shall be subject to an additional fee.

12. **LIMITATION OF LIABILITY**

- 12.1 This clause 12.1, together with clauses 12.2 and 12.3 below, sets out our entire liability (including any liability for the acts or omissions of our sub-contractors and any member of our Group) in respect of:

12.1.1 any breach of this Licence Agreement; and

12.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Licence Agreement.

- 12.2 Nothing in this Licence Agreement shall in any way exclude or limit our liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.

- 12.3 We shall not be liable for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, foreseeable, known or otherwise):

12.3.1 loss of revenue; loss of actual or anticipated profits (including without limitation loss of profits on contracts); loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data;

12.3.2 any indirect, special or consequential loss or damage howsoever caused whether or not such loss is covered in clause 12.3.1 above;

12.3.3 any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.

- 12.4 Subject to clauses 12.1 to 12.3 above, our total aggregate liability arising out of, or in connection with this Licence Agreement whether for negligence or breach of contract or any case whatsoever shall in no event exceed in any Year the annual recommended list price of the Software.

- 12.5 The express terms and conditions of this Licence Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

13. **TERM AND TERMINATION**

- 13.1 This Licence Agreement shall commence on the Commencement Date and shall, subject to the remaining provisions of this clause 13, continue in force for the Initial Term.

- 13.2 Upon termination of this Licence Agreement for any reason whatsoever, the provisions of clause 14 shall apply.

13.3 This Licence Agreement will terminate automatically if you fail to abide by the terms of this Licence Agreement.

13.4 No refund of the Licence Fee paid or due will be made in the event that this Licence Agreement terminates earlier than the Initial Term or at any time during any subsequent term prior to the renewal date.

14. **EFFECT OF TERMINATION**

14.1 On termination of this Licence Agreement all rights and duties shall determine except:

14.1.1 for such rights of action which have accrued prior to that termination; and

14.1.2 for any duties under clause 10 which shall continue in force on and after that termination.

14.2 On termination of this Agreement for any reason:

14.2.1 you shall cease using the Software forthwith and cease any other activities authorised by this Licence Agreement;

14.2.2 you shall immediately erase the Software and Documentation from all computers in your possession and/or control and immediately destroy or return to us all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to us that you have done so; and

14.2.3 all payments due to the Reseller if any and to us to the extent the same are unpaid shall become due and payable.

15. **GENERAL PROVISIONS**

15.1 Neither party shall assign or otherwise transfer the benefit of this Licence Agreement or any of its rights and duties hereunder without the prior written consent of the other.

15.2 If any part of this Licence Agreement is found void and unenforceable, it will not affect the validity of the balance of the Licence Agreement, which shall remain valid and enforceable according to its terms.

15.3 All notices under this Licence Agreement shall be in writing and shall be sent to the address of the recipient as set out in this Licence Agreement or to such other address as the recipient may have notified the sender from time to time. Any notice may be delivered personally or by first-class post or by fax and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by fax when confirmation of transmission is confirmed by the transmitting station.

15.4 For the purposes of this Licence Agreement, we shall be entitled to appoint the Reseller as our agent and accordingly we or the Reseller shall be entitled to give notices to you.

16. ENTIRE AGREEMENT

- 16.1 This Licence Agreement and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.
- 16.2 We each acknowledge that, in entering into this Licence Agreement, neither of us has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between us before entering into this Licence Agreement except as expressly stated in this Licence Agreement.
- 16.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence Agreement (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in this Licence Agreement.
- 16.4 This Licence Agreement shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.

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If you have any questions concerning this Licence Agreement, please write to Apteco Limited, Tink-a-Tank House, 21 Jury Street, Warwick, CV34 4EH, UK or email info@apteco.com.