

# 1 Schedule C

## APOLLO's Standard Terms and Conditions

NOTE: the terms and conditions found on the following pages are the terms and conditions for the perpetual license versions of APOLLO's Software. The terms and conditions for the two year license versions of APOLLO software are slightly different, given that the license is for an initial term of 2 years with maintenance and support included in the license fee.

### Apollo Education Group, Inc.

These Apollo Services Master Terms (2013 v.2) ("Master Terms") are entered into by and between Apollo (as defined below), and the entity ("Client") identified in the Order Form (as defined below) which expressly incorporates these Master Terms (hereinafter the "Agreement"). The terms of this Agreement will apply to the Services (as defined below) and any other services provided by Apollo under this Agreement. Apollo and Client are each a "Party", and collectively the "Parties", to this Agreement.

**1. PURPOSE OF AGREEMENT.** This Agreement states the terms under which Apollo provides Client the Services, including access to Online Courses through the Service, and related Professional Services, each as set forth in an applicable Order Form.

**2. DEFINITIONS.** "Apollo" means Apollo Education Group, Inc., an Arizona corporation having its principal place of business at 4025 S. Riverpoint Parkway, Phoenix, AZ 85040.

"Apollo Affiliate" means any parent company, subsidiary, or other entity that is wholly or partially controlled by or controls Apollo.

"Apollo Indemnified Parties" means Apollo, Apollo Affiliates, and their respective directors, officers, employees, shareholders and agents and all of their respective successors and permitted assigns.

"Apollo Insured Parties" means Apollo, Apollo Affiliates and each of their officers, directors, officials, agents and employees.

"Authorized Third Party User" - a third party selected by Client and approved by Apollo to assist Authorized Users and Client in using the Service for educational purposes.

"Authorized Users" means employees of Client enrolled or previously enrolled in a Online Course utilizing the Service and any Authorized Third Party User, authenticated by Client and permitted to access the Service and to whom Apollo has issued a unique pass code or other verifiable, industry standard authentication system that ensures that each user is individually identified.

“Claims” means suits, claims, actions, causes of actions, liabilities, losses, damage to property or for injury to or death of any person, costs and expenses (including, but not limited to, interest, penalties, reasonable attorneys’ fees and other expenses of litigation).

“Commercial Use” means use of the Service in any manner that generates income or profit by means of sale, license, resale, loan or transfer.

“Confidential Information” means all confidential and proprietary information of either party and any affiliates of either party, disclosed, prior to the execution of this Agreement or after, whether orally or in writing, that is specifically designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, but not limited to, the following: terms of this Agreement (including pricing and other terms set forth herein), customer information or data, financial information, any information pertaining to the business organization, operations or plans, business records and plans, marketing strategies, cost, discounts, product design information and technical information.

“Online Course” means courses on a particular subject or topic accessible through the Service as set forth in the Order Form.

“Content” means any information, data, works of authorship or other materials accessed via the Service or the Professional Services, including, but not limited to, text, photographic, audio, visual or audiovisual format, including videos, lectures and Online Course materials and syllabi.

“Force Majeure Event” means any acts of God, governmental orders or restrictions, terrorism, riot, fire, flood or other natural disaster. A Force Majeure Event excludes economic hardship, changes in market conditions or insufficiency of funds.

“Intellectual Property” means any and all rights, whether registered or unregistered, in and/or to patents; inventions, discoveries, utility models, copyright and related rights in all forms of works; moral rights; design rights; trademarks, service marks; business or trade names, domain names, database rights; proprietary information related to any technology, products or services and/or business activities, including formats, pricing and internal costs; trade secrets and know-how; designs; computer programs and software; inventions, techniques, and product designs; plans, strategies, research and development data, marketing plans, sales and marketing information and projections; vendor and supplier lists, client and customer lists, and third-party confidential information; names, requirements, plans, projects or practices of the applicable party or its customers; technical specifications; in all cases whether provided in tangible form, electronic form or via access to remote computer networks.

“Intellectual Property Rights” means any ownership rights and other proprietary rights and interests in and to the Intellectual Property.

“Service” means Apollo’s Web-based services, including the Content, as set forth in the Order Form together with any Updates of such Content.

“Order Form(s)” means mutually executed documents hereunder reflecting Client’s purchases of Services, including Online Courses, access to the Service, and related Professional Services (if applicable).

“Professional Services” means training, the provision of support faculty or facilitators, and other services, as set forth in an applicable Order Form and in accordance with the pricing terms contained therein.

“Secure Network” means a computer network that requires a user ID via authentication at the time the user accesses the network by means of an Apollo-issued unique pass code or other verifiable, industry standard authentication mechanism that ensures that each user is individually identified.

“Services” means the Service and the Professional Services.

**3. SERVICE.** Apollo will provide the Service to Client and its Authorized Users in accordance with this Agreement and any Order Form mutually entered into from time to time hereunder. Notwithstanding the foregoing, Apollo will not be obligated to grant to Client and does not hereby grant to Client access to or license or use of any third party intellectual property that has been licensed to Apollo to the extent that the third party license does not permit Apollo to sublicense such third party intellectual property without additional cost to Apollo. Nothing in this Agreement shall be construed to grant from Apollo to Client, by implication, or otherwise, any right or license to use, or make modifications to, the intellectual property of third parties for which Apollo does not have the contractual rights to sublicense to Client (“Third Party Content”). Apollo has no obligation to provide or assist in providing to Client such Third Party Content as part of the Service.

**4. APOLLO OBLIGATIONS.** Apollo shall: (i) make the Service available to Client as specified in the applicable Order Form signed by both Parties; (ii) provide Client any updated version of the Service; and (iii) provide Client with Professional Services as specified in the applicable Order Form signed by both Parties.

**5. CLIENT’S RIGHTS/OBLIGATIONS.** (a) Client shall take all commercially reasonable steps to allow only Authorized Users to have access to Service via the use of a secure password provided by Apollo.

(b) Apollo shall provide to Client each individual password for Authorized User, where required, or other access information.

(c) Client shall ensure that Authorized Users meet any and all system requirements for accessing the Service, as specified in the Order Form.

(d) The Professional Services that Apollo may provide to Client, if any, are described in the applicable Order Form(s). No additional Professional Services requested by Client shall be performed by Apollo without executing an Order Form outlining such additional Professional Services and associated Fees. Unless otherwise set forth on the applicable Order Form(s), any unused hours of Professional Services shall expire one year from the effective date of the applicable Order Form, and shall not carry over or be valid for any other purpose past the end of such year.

## 6. RESTRICTIONS ON USE.

(a) Neither Client nor any Authorized User shall remove or alter any Apollo's author's names, Apollo's copyright notices, or other means of identification or disclaimers as they may appear in any of the Service.

(b) Neither Client nor any Authorized User may use the Service except as provided for herein.

(c) Client shall take all reasonable precautions to ensure that neither it nor any Authorized User: (1) provides log-in information or passwords to any third party, or otherwise exceeds authorized access to the Service; (2) violates the Terms of Service for the Service and any other required notifications; or (3) violates the terms and conditions set forth in this Section.

(d) Neither Client nor any Authorized User may use the Service for Commercial Use.

(e) Client shall not reproduce, publish, display, distribute, sell, sublicense, transfer, rent, lease, broadcast, timeshare, loan, disclose, or otherwise make available the Service, or any part thereof, to any third party.

(f) Client shall not reverse engineer, disassemble, decompile or otherwise attempt to derive any code from the Service or any part thereof.

(g) Client shall not modify, translate, adapt, alter or create derivative works (as defined under the United States copyright laws) of the Content or based upon the Service or any part thereof.

(h) Client shall not merge the Service, or any component thereof, with another program (unless otherwise authorized herein).

(i) Client shall not use the Service, or any component thereof, for any purposes other than those explicitly stated in this Agreement.

(j) Client shall not have any right to any source code for the Service.

(k) Client shall not permit any party not specifically licensed herein to use the Service.

(l) Client shall not make unauthorized uses of Apollo Intellectual Property Rights.

## 7. IP RIGHTS.

(a) As between the parties, Apollo retains all ownership rights in and to the Service, the Content and all Apollo Intellectual Property.

(b) Subject to the terms of this Agreement and payment of the Fees, Apollo grants Client and Authorized Users, during the Term, a revocable, nontransferable, nonexclusive, limited right to download, display, view and print certain assessments and certificates provided to Authorized Users as part of the Content in an Online Course. Authorized Users may retain a copy of such materials solely for Authorized Users' personal, non-commercial use.

## 8. PAYMENT TERMS.

(a) Apollo will invoice Client for payment as specified in the applicable Order Form (the "Fees"). Except as otherwise specified in this Agreement, payment obligations are non-cancelable and Fees paid are non-refundable.

(b) Unless otherwise set forth in writing between the parties, Client will pay all undisputed invoices within thirty (30) calendar days of Client's receipt of such invoice.

(c) Unless otherwise provided, Apollo's Fees do not include any taxes, and Client is responsible for paying all taxes associated with its Fees for Services hereunder, excluding taxes based upon Apollo's net income or property. If Apollo has the legal obligation to collect or pay taxes for which Client is responsible, the appropriate amount of tax shall be invoiced and paid by Client, unless Client provides a valid tax exemption certificate authorized by the appropriate taxing authority.

(d) If any applicable law requires a Party (the "Withholding Party") to withhold or deduct taxes (other than transaction taxes) from any payments due under this Agreement (the Party to whom such payments are due, the "Withheld Party"), then: (i) the Withholding Party shall make the deductions in accordance with Applicable Law; and (ii) the Withholding Party shall pay the full amount deducted to the relevant governmental authority in accordance with Applicable Law and deliver appropriate evidence of such payment to the Withheld Party. The Withholding Party shall provide the Withheld Party originals of withholding receipts on a timely basis after such withholding. Amounts withheld pursuant to this Section shall be treated for all purposes of this Agreement as having been paid to the Withheld Party. The Withholding Party shall, at the request of the Withheld Party, make such filings and take such other actions as may be reasonably requested in order to recover for the Withheld Party any taxes withheld or paid by the Withholding Party to the relevant governmental authority or allow for an exemption from or reduction of withholding.

## 9. TERM, TERMINATION AND SUSPENSION.

(a) Unless otherwise terminated as provided below, the term of this Agreement will commence on the effective date set forth in the initial Order Form executed by and between Client and Apollo, and will continue until the expiration, or earlier termination, of the applicable term of the last Order Form that references this Agreement, including renewals thereof (the "Term").

(b) This Agreement may be terminated: (i) immediately by either Party upon any violation of Section 12 by the other; (ii) by either Party if the other Party is in material breach of any other obligation under this Agreement, and such failure continues for thirty (30) days after the non-breaching Party provides notice to the other Party; (iii) by Apollo upon written notice to Client, in the event of any failure by Client to make any payment when due under this Agreement if such failure continues for ten (10) days after the due date for such payment; (iv) immediately by a Party upon any insolvency or suspension of the other Party's operations or any petitions filed or proceeding made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings; or (v) as otherwise provided in this Agreement. (c) Subject to Client's good faith dispute of amounts invoiced as Fees, Apollo shall have the right to suspend Client's access to the Service if Client fails to pay Fees invoiced by Apollo within five (5) days following the payment due date. If Client breaches Section 6 or Section 7 of this Agreement, upon five (5) days written notice Apollo may suspend access to the Service, terminate access to the Service, and terminate this Agreement and all or a portion of the corresponding Order Forms at its reasonable discretion within five (5) days of such uncured breach. (d) Upon any termination or expiration of this Agreement or an applicable Order Form, (i) the rights and licenses granted to Client under this Agreement and the applicable Order Forms will automatically terminate; (ii) Client will, at its expense, remove all references and links to the Service from any Client materials and (iii) Client shall be responsible for payment for all Fees associated with the Service provided by Apollo through the effective date of termination. Any continued use of the Service after termination or expiration shall be charged at the greater of the rate stated on the Order Form.

(e) The parties' rights and obligations, which by their nature would continue beyond the expiration or termination of this Agreement, including but not limited to those regarding indemnification, warranties and confidentiality, shall survive any termination or expiration of this Agreement.

## 10. PERSONNEL.

During the term of this Agreement and for twelve (12) months thereafter, Client shall not solicit for employment any employee or contractor of Apollo or any Apollo Affiliate. A general advertisement of Client or a request for employment which is initiated exclusively by an employee or contractor of Client shall not be considered a solicitation pursuant to this section.

## 11. WARRANTIES.

(a) Each Party represents and warrants that: (i) it has all necessary corporate power and authority to enter into this Agreement and to perform its obligations hereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have

been duly authorized by all necessary corporate actions on its part; (ii) it will comply with all applicable laws in performing its obligations under this Agreement; (iii) this Agreement constitutes a legal, valid and binding obligation of the Party, enforceable against it in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement will not constitute a violation of any judgment, order or decree or a breach of a material agreement that would materially impair or prevent a Party from complying with its obligations under this Agreement.

(b) Apollo further represents and warrants that: (i) the Service will be provided to Client substantially in compliance with the terms of this Agreement; and (ii) the Professional Services provided under this Agreement will be performed in a professional and workman-like manner. (c) OTHER THAN THE FOREGOING WARRANTIES, APOLLO MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO THE SERVICES. FURTHER, APOLLO DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICES OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO THIS AGREEMENT, OR OF THE SERVICES, IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE, OR THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. UNDER NO CIRCUMSTANCE WILL APOLLO BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A USER'S RELIANCE ON INFORMATION, PRODUCTS OR SERVICES OBTAINED UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, APOLLO SPECIFICALLY DISCLAIMS ALL EXPRESS WARRANTIES NOT STATED HEREIN AND ALL IMPLIED WARRANTIES, INCLUDING, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO APOLLO AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT. (i) Internet Usage. Client acknowledges that the Internet is essentially an unregulated, insecure and unreliable environment, and that the ability of Client to access and use the Service is dependent on the Internet and hardware, software and services provided by various third party providers. APOLLO SHALL NOT BE RESPONSIBLE FOR CLIENT'S INABILITY TO ACCESS OR USE THE SERVICE TO THE EXTENT CAUSED BY FAILURES OR INTERRUPTIONS OF ANY HARDWARE, SOFTWARE OR SERVICES PROVIDED BY CLIENT OR THIRD PARTY PROVIDERS. (ii) Service. CLIENT ACKNOWLEDGES AND AGREES THAT APOLLO DOES NOT WARRANT THAT THE SERVICE IS ERROR FREE, THAT CLIENT WILL BE ABLE TO ACCESS OR USE THE SERVICE WITHOUT PROBLEMS OR INTERRUPTIONS, OR THAT THE SERVICE IS NOT SUSCEPTIBLE TO INTRUSION, ATTACK OR COMPUTER VIRUS INFECTION. (iii) Third Party Web Sites. The use of third-party web sites linked to or advertised through the Service by Client or its Authorized Users is at the Client's own risk and subject to the terms and conditions of use for such third party sites. CLIENT SHALL MAKE THE FOREGOING CLEAR THROUGH ITS NOTICES AND CLIENT ACKNOWLEDGES THAT APOLLO IS NEITHER RESPONSIBLE NOR LIABLE FOR, DIRECTLY OR INDIRECTLY, AND DOES NOT ENDORSE ANY THIRD-PARTY SITES ACCESSED THROUGH THE SERVICE, ANY: (i) CONTENT ON SUCH THIRD PARTY SITES, INCLUDING, ANY PRODUCTS OR SERVICES OFFERED THEREON; (ii) ACTIVITIES OR TRANSACTIONS IN WHICH CLIENT OR AUTHORIZED USERS ENGAGE ON ANY THIRD PARTY SITE; OR (iii) USE OF COOKIES ON ANY THIRD

PARTY SITE. (iv) Network Intrusions. CLIENT AGREES THAT APOLLO WILL NOT BE LIABLE FOR DAMAGES ARISING FROM ANY BREACH, UNAUTHORIZED ACCESS TO, MISUSE OF, OR INTRUSION INTO ANY NETWORK USED BY CLIENT IN ACCESSING THE SERVICE TO THE EXTENT SUCH DAMAGES WERE BEYOND APOLLO'S REASONABLE CONTROL. (d) the exclusive remedies for UNCURED breach of the foregoing warranties are: (i) in the case of nonconforming professional services, to reperform the professional services or terminate the professional services PORTION OF the agreement IN ACCORDANCE WITH section 9 herein; and (ii) in the case of nonconforming Services, to PROVIDE REPLACEMENT ACCESS, OR TERMINATE THE SERVICE PORTION OF THE AGREEMENT IN ACCORDANCE WITH SECTION 9 HEREIN. If any warranty remedy is held to fail of its essential purpose, the limitation of liability herein shall be enforced to the fullest extent permitted by law. CLIENT shall have no right to withhold payment or make set offs or deductions from any payment due by CLIENT as a result of any claims that CLIENT may have or allege to have against APOLLO under this Agreement. 12. CONFIDENTIALITY. A. (a) Under this Agreement, a party that receives Confidential Information from the other party is the "Receiving Party" and the party that owns the Confidential Information and provides it to the Receiving Party is the "Disclosing Party." Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed by the Receiving Party to the Disclosing Party; (ii) was lawfully known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) is lawfully received from a third party without breach of any obligation owed to the Disclosing Party; or (iv) is independently developed by the Receiving Party. B. (b) All Confidential Information will be the sole and exclusive property of the Disclosing Party and the Receiving Party will not have any ownership interest in such Confidential Information or engage in any derivative uses thereof. The Receiving Party shall: (i) use at least the same degree of care to prevent unauthorized use and disclosure of such Confidential Information as the Receiving Party uses with respect to its own confidential information of a similar nature, provided that in all events, the manner and method used to prevent unauthorized use and disclosure is commercially reasonable in the circumstances; (ii) use such Confidential Information only in performance of its obligations under this Agreement; and (iii) not disclose or grant access to such Confidential Information to any third party (including representatives, counsel and consultants) without the express prior written consent of the Disclosing Party. The Receiving Party shall provide prompt written notice to the Disclosing Party of any actual or potential unauthorized disclosure or unauthorized use of the Confidential Information and shall assist the Disclosing Party in the remedying to prevent and/or stop the disclosure or use of the Confidential Information. C. (c) In the event the Receiving Party becomes legally compelled (by depositions, interrogatory, subpoena, civil investigative demand, similar process or otherwise) to disclose any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if the Disclosing Party waives in writing compliance with the terms hereof, the Receiving Party agrees to furnish only that portion of the information which the Receiving Party is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information. D. (d) The Receiving Party shall return to the Disclosing Party, or at the Disclosing Party's option, destroy (and certify in writing such return or destruction) any and all Confidential Information upon termination or expiration of this Agreement and upon request of the Disclosing Party. This Section shall survive termination or expiration of this Agreement. E. (e) Despite any other provision herein, the failure by the Disclosing Party to identify information as

Confidential Information is not an acknowledgement or admission by the Disclosing Party that the information is not confidential or a waiver by the Disclosing Party of any of its rights with respect to such information. F. (f) The Receiving Party understands and acknowledges that the Confidential Information has been developed or obtained by the Disclosing Party through the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of the Disclosing Party which provides a significant market advantage. The Receiving Party further 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 the Receiving Party's obligations hereunder, that any such breach may result in irreparable harm to the Disclosing Party, and therefore, the Receiving Party agrees that upon any such breach or any threat thereof, the Disclosing Party may immediately seek injunctive relief against such breach or threatened breach. Accordingly, the Disclosing Party shall be entitled to appropriate equitable relief from a court of competent jurisdiction in addition to whatever remedies the Disclosing Party might have at law. (g) Any breach of this Section entitled "CONFIDENTIALITY" shall constitute a material breach of this Agreement. The Receiving Party recognizes and agrees that nothing contained in this Agreement shall be construed as the Disclosing Party or Apollo Affiliates granting the Receiving Party any ownership, intellectual property or other rights by license or otherwise to any Confidential Information disclosed by the Disclosing Party pursuant to this Agreement. The acts or omissions of the Receiving Party and anyone with which it is associated, including, but not limited to, its respective employees and agents, related to Confidential Information shall be deemed to be the acts or omissions of the Receiving Party.

13. INDEMNIFICATION. (a) Mutual Indemnification. Subject to Section 13(d), each Party shall defend any third party claim, suit, demand, action or cause of action ("Claim") against the other Party and the other Party's affiliates and their respective officers, directors, shareholders, employees, representatives and all of their respective successors and assigns arising from the death of or physical injury to any person or damage to the indemnified Party's tangible property to the extent proximately caused by the negligence of the indemnifying Party or its agents or employees, and indemnify and hold harmless the other Party and the other Party's affiliates and their respective officers, directors and employees from and against damages, judgments, liabilities, losses and reasonable costs and expenses, including reasonable legal fees ("Losses") incurred in connection therewith. (b) Indemnification by Apollo. Subject to Section 13(d), Apollo shall defend any Claim against Client and its officers, directors, shareholders, employees and representatives to the extent such suit or action is based on a claim that Client's permitted and appropriate use of the Service under this Agreement constitutes an infringement of a United States patent, trademark, trade secret, copyright or other United States intellectual property right, and Apollo will pay those Losses finally awarded against Client in any monetary settlement or final, non-appealable judgment of such suit or action which are specifically attributable to such Claim. This indemnity does not apply to any claims based on Client's use of the Service: (i) in violation of this Agreement; (ii) in combination with any other software, hardware, network, content or system where the alleged infringement relates to such combination; or (iii) based on Apollo's compliance with Client's instructions, designs or specifications where the alleged infringement relates to such compliance. If any portion of the Service becomes, or in Apollo's opinion is likely to become, the subject of a claim of infringement, then Apollo may, at its option and expense, procure for Client the right to continue using the Service or replace or modify the affected portion of the Service so that it becomes non-infringing. If neither alternative is reasonably available, Apollo may terminate this Agreement. THE FOREGOING STATES APOLLO'S ENTIRE OBLIGATION OF INDEMNIFICATION FOR ANY CLAIM OTHER THAN FOR DEATH, PERSONAL INJURY

OR DAMAGE TO TANGIBLE PROPERTY AS PROVIDED IN SECTION 13(a). (c) Client Indemnification. Subject to Sections 13(b) and 13(d), Client shall defend Apollo and Apollo Affiliates and their respective officers, directors, shareholders, employees, representatives and all of their respective successors and assigns against any Claim and indemnify and hold harmless Apollo and Apollo Affiliates and their respective officers, directors, shareholders, employees, representatives and all of their respective successors and assigns from any and all Losses arising out of or relating to: (i) Client's use of the Service in violation of the terms of this Agreement; (ii) Apollo's use of Client's Content or the Client Proprietary Marks in accordance with the terms of this Agreement; and (iii) any claim described in Section 13(b) (i)-(iii) above. (d) Conditions. The Parties' indemnification obligations under this Section 13 are contingent upon: (i) the indemnified Party giving prompt written notice to the indemnifying Party of any claim under this Section (provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent, and only to the extent, that the indemnifying Party shall have been actually prejudiced as a result of such failure); (ii) the indemnifying Party having the right, but not the obligation, to assume sole control of the defense or settlement of the claim; and (iii) at the indemnifying Party's request and expense, the indemnified Party cooperating in the investigation and defense of such claim(s). If the indemnifying Party assumes the defense of any claim hereunder, the indemnified Party shall be entitled to participate in (but not control) such defense and to retain its own counsel, at its own expense. The indemnifying Party shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of the indemnified Party or imposes additional obligations on the indemnified Party, without the prior express written consent of the indemnified Party. (e) Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES WILL APOLLO, NOR ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSORS OR SUPPLIERS, BE LIABLE TO CLIENT OR THROUGH CLIENT WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY, FOR: (I) ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL, EXEMPLARY, EXTRAORDINARY, RELIANCE, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST REVENUE OR FAILURE TO REALIZE EXPECTED SAVINGS; OR (II) ANY OTHER DAMAGES THAT IN THE AGGREGATE EXCEED ALL AMOUNTS PAID OR PAYABLE BY CLIENT TO APOLLO HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE. 14. RELATIONSHIP. Client acknowledges that the relationship with Apollo is that of an independent contractor and nothing in this Agreement or related to Client's performance of any obligation hereunder shall be construed to create an employee relationship between Apollo and Client or any of Client's employees. Client is solely responsible for any and all liabilities of its employees for their performance under this Agreement and further is responsible for any and all taxes imposed upon Client, including FICA, FUTA, unemployment taxes, worker's compensation coverage and other liabilities incurred as the employer providing the Service pursuant to this Agreement. Client acknowledges and agrees that its employees are employees of Client and further acknowledges and agrees that its employees are not eligible for any benefits under any benefit plan of Apollo, Apollo Affiliates, or their respective

successors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

**15. GOVERNING LAW, FORUM AND DISPUTE RESOLUTION.** (a) **Governing Law and Forum.** The laws of the State of Arizona, without giving effect to its conflicts of law principles or rules, govern all matters arising out of or relating to this Agreement, including its validity, interpretation, construction, performance and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Superior Court of Maricopa County, in the State of Arizona or in the United States District Court for the District of Arizona. For the purposes of all legal actions and proceedings arising out of or relating to this Agreement, each party to this Agreement submits to the exclusive jurisdiction of: (i) any court of the County of Maricopa County, Arizona and its appellate courts; and (ii) the United States District Court for the District of Arizona and its appellate courts. (b) **Dispute Resolution.** In the event a controversy, claim or dispute (“dispute”) arising out of or relating to this Agreement arises between the parties, either party may request by notice to the other party that the dispute be escalated to the parties’ respective senior management personnel. Upon request, each party’s respective senior management personnel will conference by telephone or in person with the other party’s senior management personnel within a reasonable period of time not to exceed fifteen (15) calendar days of such notice to determine if the dispute may be resolved. If such senior management personnel are unable to resolve the dispute within thirty (30) calendar days of such meeting, either party may resort to alternate dispute resolution such as mediation or otherwise seek recourse from the courts. Either party may seek injunctive or other urgent equitable relief at any time.

**16. GENERAL PROVISIONS.** (a) **Assignment.** This Agreement may not be assigned, in whole or in part, by Client without the advance written consent of Apollo. Client may not delegate any performance under this Agreement. Any attempt by Client to assign and/or delegate its performance under this Agreement, in whole or in part, in violation of this provision is void. Apollo may assign this Agreement and any of its rights and/or obligations hereunder upon written notice to Client, to any Apollo Affiliate or to an entity with or into which Apollo is merged or consolidated or to which it sells all or substantially all its capital stock or assets associated with the operations related to this Agreement, without the consent of Client. (b) **Authority.** Each party represents and warrants that the person executing this Agreement is duly authorized to bind and to act on behalf of their respective entity. (c) **Counterparts.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. This Agreement may be executed by facsimile or PDF. The facsimile or PDF will be deemed an original and fully enforceable and admissible in any legal proceeding. Delivery of an executed counterpart signature page by facsimile or PDF is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party(ies). In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged. (d) **Entire Agreement.** This Agreement is the entire agreement between the parties relating to the subject matter herein and supersedes any prior representations or agreements, oral or written and all other communications. This Agreement will not be varied except in writing, signed by the parties. The terms of this Agreement and any Order Form shall control over any different or additional terms of any purchase order submitted by Client. Any terms and conditions in a purchase order are void and have no legal effect. This Agreement, including the exhibits and all applicable Order Form(s), contains the entire understanding of the Parties relating to the subject matter and supersedes all prior agreements and contemporaneous understandings, both written and oral, regarding such subject matter. The Order Form comprises part of, and is subject to the terms

and conditions of, this Agreement, as executed between the Parties. Any capitalized terms not defined in the Order Form shall have the meanings ascribed to them within this Agreement. (e) Force Majeure. Neither party shall be liable to the other for any Force Majeure Event, that prevents a party (the “Nonperforming Party”), in whole or in part, from: (i) performing its obligations under this Agreement; or (ii) satisfying any conditions to such party’s obligations under this Agreement, where the unforeseen Force Majeure Event is beyond the reasonable control of and not the fault of the Nonperforming Party and the Nonperforming Party has been unable to avoid or overcome the Force Majeure Event by the exercise of due diligence. The party claiming to be affected by the Force Majeure Event shall provide immediate notice to the other party setting forth the particulars of the Force Majeure Event. Upon cessation of the Force Majeure Event, the Nonperforming Party agrees promptly to perform or complete the performance of its obligations as set forth in this Agreement. If the delay exceeds thirty (30) calendar days, the party that is not the Nonperforming Party shall have the right to immediately terminate this Agreement and recover any amounts paid in advance for the delayed Service. (f) Headings and Captions. The descriptive headings of the articles, sections and subsections of this Agreement are for convenience only and do not constitute a part of this Agreement. (g) Interpretations. The parties agree that the terms of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguities shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language. (h) No Waiver. The parties may not waive any provision of this Agreement in whole or in part, except pursuant to a writing executed by both parties. The failure of either party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of any provisions hereunder, nor will the failure by either party to strictly enforce any provision of this Agreement prejudice the right of that party to take any action in the future to enforce any provisions hereunder. (i) Publicity. Except as specifically authorized in writing by Apollo or as required by law (which requirement shall be described in detail to Apollo Entity in writing at least five (5) business days prior to the date of scheduled disclosure), Client shall not publicize this Agreement or the transactions contemplated herein, nor shall Client use in any manner, Apollo’s or any Apollo Affiliate’s name, trademark, service mark, service name or symbol, in any advertising or promotion including but not limited to, press releases, paid advertisements, announcements at public events, trade shows and conferences, promotional flyers and other materials. Apollo may reference Client in promotional materials as a customer of Apollo, subject to Client’s prior consent. (j) Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a competent court or tribunal, the validity and enforceability of the remaining provisions will not be affected and, in lieu of such illegal, invalid or unenforceable provision, there will be added as part of this Agreement one or more provisions as similar in terms and effect as may be legal, valid and enforceable under applicable law. (k) Notices. Notices permitted or required under this Agreement shall be deemed to have been given on the date actually received, when personally delivered or when sent by electronically confirmed facsimile or email followed by written confirmation sent by mail as provided herein, or three (3) days after mailing if mailed by registered or certified U.S. mail, return receipt requested. The notice address for each party is the address on the first page of this Agreement, and may be changed by giving notice as provided herein. All notices provided to Apollo Entity must copy the office of Apollo General Counsel. Either party may change the address for notices by providing written notice to the other party in the manner set forth herein. (l) Third Party Beneficiaries. This Agreement is for the benefit of Apollo, and Apollo Affiliates and Client only and not for the benefit of any third party. G. (m) Audit. Client shall maintain records

of all activities subject to payments pursuant to this Agreement, including without limitation records that would allow Apollo to verify usage numbers for the Service. Client shall permit Apollo or at Apollo's option, a reputable independent certified public accounting firm designated by Apollo to access and review, at a mutually agreed upon time during normal business hours, the records and books of account and records and system information related to usage of Client that relate to its performance under this Agreement for the purpose of determining whether such performance was and remains consistent with Client's obligations hereunder and whether invoices and usage numbers are accurate. Client shall use Generally Accepted Accounting Principles and maintain all usual and customary records related to such performance and compliance at its principal place of business for a period of two (2) years following the expiration or termination of this Agreement. Apollo shall provide Client with reasonable advance written notice of any audit to be conducted hereunder and such audit shall not unreasonably interfere with the normal business operations of Client. Client shall cooperate fully with Apollo and its auditors in connection with any audit pursuant to this subsection (n) and shall give Apollo and its auditor's access to its premises for conducting such audit. Such audits shall be limited to one (1) in any consecutive twelve (12) month period. If the audit discloses mistakes in excess of five percent (5%) in Apollo's favor, the costs and fees related to the audit shall be paid for by Client. Upon discovery of an error made by Client, Apollo shall provide notice to Client of the error.