



MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”), effective as of April 10, 2023 (the “**Effective Date**”), is entered into by Premier International Enterprises, LLC, a Delaware limited liability company having its principal place of business at 135 S. LaSalle, Suite 2225, Chicago, Illinois 60603 (“**Premier**”), and Town of Apex, a municipal corporation, having its principal place of business at 73 Hunter Street Apex, NC 27502 (“**Client**”). Premier and Client shall also be known individually as a “Party” or collectively known as the “Parties”.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PREMIER SERVICES

1.1 Premier Services. Subject to the terms and conditions of this Agreement, Premier shall provide Client services and deliverables as set forth in any mutually agreed to and executed Statement of Work (“Statement of Work” or “SOW”) (services and deliverables shall be collectively known as the “Services” or the “Premier Services”). All SOWs will be deemed incorporated herein by reference and shall be consecutively numbered (i.e. Statement of Work Number 1, etc.). This Agreement is not an exclusive engagement with Premier.

1.2 SOW Change Orders. The Parties may mutually agree to execute a change order (“Change Order”) to any SOW. In the event that the Client initiates a Change Order to any SOW, as soon as reasonably possible after receipt of any such Change Order, Premier shall provide Client with a written statement offering to perform services consistent with the Change Order or proposing modifications to the Change Order. Any statement offering to perform or proposing modifications to the Change Order will include detailed information as to the availability of resources, and the impact, if any, on the time for completion of Services or the delivery of any deliverables and the cost therefore. Each Change Order shall be signed by the authorized representatives of each Party and shall constitute a formal modification to and become a part of the SOW. In no event shall the SOW be deemed amended except through a Change Order approved by authorized representatives of each Party in accordance with the provisions as described herein.

1.3 Applaud Software. Client acknowledges that the Services will be performed by Premier utilizing Premier’s proprietary software known as Applaud (“Applaud”). Client acknowledges that Applaud will be installed on Client’s network during the term hereof for the sole reason of allowing Premier to perform the Services. No license or other rights in or to Applaud are granted to Client hereunder, even if Applaud is installed on Client network. Client may not access Applaud for any reason without prior written approval of Premier. Upon termination of this Agreement or any applicable SOW or as may otherwise be requested by Premier, Client agrees to delete any and all instances of Applaud and/or provide Premier access to its network to allow Premier to delete Applaud.

1.4 Client Affiliates. Client Affiliates may purchase Premier Services subject to the terms of this Agreement by executing a SOW hereunder. This Agreement shall apply to SOWs executed with such Client Affiliates, and such Affiliates shall be deemed the “Client” as contemplated herein in connection with such SOW.

1.5 Client Responsibilities. Client shall: (a) have sole responsibility for the accuracy and legality of all Client data (“Client Data”) provided to Premier hereunder; and (b) provide Premier timely and accurate responses to Premier’s requests for information and/or other assistance as may be necessary for Premier to perform the Services.

1.6 Protection of Client Data. Premier will maintain administrative, physical and technical safeguards designed to protect the confidentiality and integrity of Client Data. Premier will only access, use, process, modify, delete or disclose Client Data: (a) to provide the Services in accordance with this Agreement, and (b) as compelled by law in accordance with the Confidentiality section below.

2. FEES & PAYMENT

2.1 Fees and Payment. Client agrees to pay Premier as set forth on the applicable SOW (the “Service Fees”). Client shall also reimburse Premier for pre-approved out-of-pocket expenses and pre-approved third-party expenses incurred in connection with the Services (“Expenses”). Unless otherwise set forth in the applicable SOW, Premier will invoice Client monthly for any Service Fees or Expenses incurred in the immediately preceding calendar month. Unless otherwise set forth in an applicable SOW, Client shall pay all invoices within thirty (30) days of the date of invoice. In the event of termination of this Agreement for any reason, Client shall be responsible to pay Service Fees and Expenses for Services performed through the date of termination. Service Fees paid are non-refundable.

2.2 Overdue Payments. Premier may impose late fees if Client’s account is thirty (30) days or more overdue,



Premier may, in addition to any of its other rights or remedies, upon written notice, suspend Services until such amounts are paid in full. If such failure to pay has not been cured within sixty (60) days of the due date, then upon written notice, Premier may terminate this Agreement and any or all outstanding SOWs in accordance with the Termination for Cause section below.

2.3 Payment Disputes. Premier shall not exercise its rights under the “Overdue Payments” section above if Client is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

2.4 Taxes. Unless otherwise stated, Premier’s fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use, sales or withholding taxes collected by any jurisdiction whatsoever (collectively, “Taxes”). Client is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Premier’s net income or property. If Premier has the legal obligation to pay or collect Taxes for which Client is responsible under this Section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Premier with a valid tax exemption certificate authorized by the appropriate taxing authority.

3. PROPRIETARY RIGHTS

3.1 Ownership of Services. All Services and any other materials, information or data, in whatever form of media, specifically prepared for, produced, and/or resulting from Premier’s performance of the Services herein are owned by Premier, unless the Parties mutually agree in an applicable SOW that certain deliverables are to be owned by Client (“Client Owned Deliverables”). To the extent that Parties agree in an applicable SOW that certain Deliverables are to be Client Owned Deliverables, such Client Owned Deliverables shall become the property of Client, exclusive of any Premier materials (“Premier Materials”) contained therein, including but not limited to Applaud. To the extent that title to any Client Owned Deliverables may not, by operation of law, vest in Client or such Client Owned Deliverables may not be considered works for hire, Premier irrevocably assigns all rights, title, and interest in such Client Owned Deliverables to Client, exclusive of any Premier Materials. Upon request, Premier agrees to give Client reasonable assistance required to perfect these rights.

3.2 Reservation of Rights. As between Premier and Client, Client exclusively owns all rights, title and interest in and to all Client Data. Subject to the limited rights expressly granted hereunder, Premier reserves all rights, title and interest in and to the Premier Services and Applaud, including all related intellectual property rights therein and to any improvements, enhancements or updates thereto. No rights are granted to either Party hereunder other than as expressly set forth herein.

3.3 Intellectual Property Restrictions. Client shall not (a) modify, copy or create derivative works based on the Premier Services or Applaud; (b) reverse engineer the Premier Services or Applaud; (c) alter, remove or suppress in any manner any copyright, trademark or other notices displayed by the Premier Services or Applaud; or (d) access the Premier Services or Applaud in order to (i) build a competitive product or service, or (ii) copy any features, functions or graphics of the Premier Services or Applaud.

3.4 Feedback. If Client elects to provide to Premier any suggestions, comments, improvements, ideas or other feedback relating to the Premier Services or Applaud (collectively, “Feedback”), Client acknowledges and agrees that Premier may incorporate into the Premier Services or Applaud any such Feedback without any obligation, payment, or restriction based on intellectual property rights or otherwise, excluding any Client Confidential Information contained in the Feedback.

4. CONFIDENTIALITY

4.1 Definition of Confidential Information. As used herein, “Confidential Information” means all confidential and proprietary information of a Party, or any of its Affiliates (“Disclosing Party”), disclosed to the other Party, or any of its Affiliates, (“Receiving Party”) that is marked or designated as “Confidential” and/or “Proprietary”, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, all information and data relating to the provision of the Services, a Party’s business and marketing plans, technology and technical information, product designs, and business processes. Client Data is the Confidential Information of Client. Notwithstanding the foregoing, each Party may disclose the existence and terms of this Agreement, in confidence, to a potential purchaser of or successor to any portion of such Party’s business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business, division, or group of such Party. Confidential Information (except for Client Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or any third party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party; (iv) is received from a third party without breach of any obligation owed to the Disclosing Party; or (v) is a public record as defined in Chapter 132 of the North Carolina General Statutes.

4.2 Confidentiality. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) to not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its



Affiliates' employees, contractors and agents (“**Representatives**”) who need such access for purposes consistent with this Agreement and who are subject to written confidentiality obligations with the Receiving Party containing protections no less stringent than those contained herein. Receiving Party shall be liable for any breach of this Section 4 by its Representatives. Other than as otherwise provided herein, neither Party shall disclose the terms of this Agreement or any SOW to any third party other than its Representatives without the other Party’s prior written consent.

4.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

4.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) or fails to limit access to any Confidential Information of the Disclosing Party in breach of the confidentiality obligations set forth herein, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

4.5 Survival. The obligation of Confidentiality set forth in this Section 4 shall survive termination or expiration of this Agreement.

5. WARRANTIES & DISCLAIMERS

5.1 Mutual Warranties. The Parties each represent and warrant that: (a) the execution, delivery and performance of this Agreement has been duly authorized and nothing contained in this Agreement or in the performance of this Agreement constitutes a breach of any other contract or obligation; and (b) to its knowledge, it is in compliance with all applicable laws, rules, and regulations as they apply to such Party in connection with the services provided under this Agreement.

5.2 Premier Warranties. Premier warrants and represents that: (a) it has all third-party licenses, permits (including governmental work permits and/or other consents/documents enabling Premier to work in the United States), rights, and/or certifications necessary for the performance of Services; (b) it shall perform its Services in a professional, workmanlike, and diligent manner in accordance with this Agreement and applicable law; and (c) it shall use skilled, qualified and competent staff to perform Services each of whom have passed a background check.

5.3 Disclaimer. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, PREMIER EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR STATEMENT SHALL BE DEEMED TO BE A WARRANTY BY PREMIER. PREMIER MAKES NO WARRANTY OF ANY KIND WITH RESPECT TO ANY THIRD-PARTY SOFTWARE OR EQUIPMENT USED BY CLIENT IN CONNECTION WITH THE PREMIER SERVICES.

6. MUTUAL INDEMNIFICATION

6.1 Indemnification by Premier. Subject to Section 7 below, Premier shall defend, indemnify and hold Client harmless from any finally awarded damages, reasonable attorneys’ fees and judgments or settlements (“**Damages**”) arising from any claims, demands, suits or proceedings made or brought by a third party (“**Claims**”) against Client alleging (a) that Client’s use of the Premier Services within the scope of this Agreement infringes the intellectual property rights of such third party; (b) a breach by Premier of its confidentiality obligations under Section 4 hereof; or (c) gross negligence or willful misconduct by Premier. If Premier receives information about an infringement Claim related to the Premier Services, Premier shall in its discretion and at no cost to Client: (i) modify the Premier Services so that they no longer infringe; (ii) obtain a license for Client’s continued use of the Premier Services in accordance with this Agreement, or if (i) and (ii) are not reasonably practicable: then (iii) terminate the Services upon 30 days’ written notice and refund Client prepaid fees, if any. Premier shall have no obligation to indemnify or defend Client to the extent any Claim arises from Client’s use of any Third-Party Provider’s services, or Client’s use of the Premier Services in breach of this Agreement.

6.2 Procedure. The Party seeking indemnification must: (a) promptly notify the indemnifying Party in writing of the applicable Claim for which indemnification is sought; provided, that failure to notify shall not relieve a Party of its indemnification obligations unless the indemnifying Party has been materially prejudiced thereby; (b) give the indemnifying Party sole control of the defense and settlement of the Claim (except that the indemnifying Party may not settle a Claim unless it unconditionally releases the indemnified Party of all liability); and (c) provide the indemnifying Party with all non-monetary assistance, information and authority reasonably required for the defense and settlement of such Claim.



6.3 Exclusive Remedy. This “Mutual Indemnification” section states the indemnifying Party’s sole liability to, and the indemnified Party’s exclusive remedy against, the other Party for any type of Claim described in this Section.

7. LIMITATION OF LIABILITY

7.1 Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY’S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CLIENT HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER. THE ABOVE LIMITATIONS WILL NOT LIMIT CLIENT’S PAYMENT OBLIGATIONS HEREUNDER.

7.2 Exclusion of Indirect Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR COVER DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

8. INSURANCE

8.1 Insurance. During the term of this Agreement, Premier shall maintain, at its expense, the following insurance coverages:

- (i) Business Automobile Liability insurance, non-owned and hired motor vehicles with combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence;
- (ii) Commercial General Liability insurance with combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) and Two Million Dollar (\$2,000,000) in the aggregate in a policy year;
- (iii) Workers’ Compensation Insurance in state statutory amounts and employer’s liability insurance as required by law, but in no event less than One Million Dollars (\$1,000,000) per occurrence;
- (iv) Umbrella Liability insurance with a limit of Ten Million Dollars (\$10,000,000) over General Liability, Auto and Workers’ Compensation;
- (v) Professional Liability coverage with minimum limits of Five Million Dollars (\$5,000,000) per claim and annual aggregate;
- (vi) Umbrella liability coverage with a limit of Five Million Dollars, (\$5,000,000) over Professional Liability;
- (vii) Employee Dishonesty and Computer Fraud coverage, in connection with, any fraudulent or dishonest acts committed by employees or agents, in the amount of Two Million Dollars (\$2,000,000) per occurrence; and.
- (ix) Cyber Coverage in an amount of Five Million Dollars (\$5,000,000) per claim and annual aggregate.

All policies shall be written using A- rated carriers falling within a “Secure” rating by the A.M. Best Company or its replacement.

9. TERM & TERMINATION

9.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for three (3) years (the “Initial Term”). Notwithstanding the foregoing, this Agreement shall control all outstanding SOWs even after termination hereof.

9.2 Term of SOWs. SOWs hereunder shall commence on the Start Date and continue for the term specified in the applicable SOW.

9.3 Termination for Cause. A Party may terminate this Agreement for cause: (a) upon 30 days’ written notice of a material breach to the other Party if such breach remains uncured at the expiration of such period; or (b) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or



assignment for the benefit of creditors. Termination for cause by Client shall not relieve Client of the obligation to pay any fees accrued or payable to Premier through the effective date of termination. Upon any termination for cause by Premier, Client shall remain obligated to pay all fees owed through the effective date of termination.

9.4 Surviving Provisions. The terms of any provision required to give effect thereto shall survive the expiration or termination of this Agreement.

10. GENERAL PROVISIONS

10.1 Non-Solicitation of Employees. The Parties agree that during the term hereof and for a period of one (1) year after termination hereof, without the prior written consent of the other, neither Party will directly or indirectly, solicit or aid others to solicit for employment or consultancy any employees, agents or consultants of the other Party; provided, however, that the foregoing provision will not prevent hiring any such person as a result of such person responding to a general advertisement for employment.

10.2 Publicity. Neither Party shall use the other's name, trademarks or logos, without prior written consent in each instance of use. Neither Party shall issue a press release or other public statement regarding this Agreement or the Service provided hereunder, without the prior written consent of the other. Notwithstanding the foregoing, Premier may use Client's name and logo to provide the Services and to identify Client as a customer of Premier.

10.3 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

10.4 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.5 Anti-Corruption. Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Client learns of any violation of the above restrictions, it will use reasonable efforts to promptly notify Premier.

10.6 Notices. All notices shall be in writing and shall be deemed to be delivered when deposited in the United States Postal Service, postage prepaid, return receipt requested, or when sent by email (provided a confirmation copy is promptly by US Mail) or overnight mail. All notices shall be directed to the respective addresses set forth on the title page of this Agreement or to such other address as one Party may, from time to time, designate by notice to the other Party.

10.7 Waiver and Cumulative Remedies. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

10.8 Severability. Any provision of this Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

10.9 Assignment. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all SOWs), without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other Party. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.10 Governing Law; Prevailing Party. This Agreement shall be governed exclusively by the internal laws of the State of North Carolina, without regard to its conflicts of laws rules. The state and federal courts located in Wake County, North Carolina shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party consents to the exclusive jurisdiction of such courts. t

10.11 Entire Agreement. This Agreement is the entire agreement between the parties regarding Client's use of the Services, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the parties. The parties agree that any term or condition stated in a Client purchase order or in any other Client order documentation (excluding SOWs) is void. The language used in this Agreement shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either Party shall apply to rights granted herein or to any term or condition of this Agreement.



10.12 Signatures; Counterparts. The execution and delivery of this Agreement has been duly authorized and constitutes the legal, valid and binding obligation on each of the parties. This Agreement may be executed and transmitted by facsimile or electronic mail in pdf or other electronic format, and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or electronic mail shall be deemed an original signature for the purpose of this Agreement.

10.13 E-Verify. Premier shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Premier shall require all of Premier’s subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

10.14 Anti-Human Trafficking. Premier warrants and agrees that no labor supplied by Premier or Premier’s subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

10.15 Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Premier hereby warrants and agrees that Premier will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement “protected class” includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

10.16 Nonappropriation. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Client are from appropriations and monies from the Town of Apex Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Client to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Client except to pay for Services rendered hereunder through the date of termination.

***** SIGNATURE PAGE TO FOLLOW *****

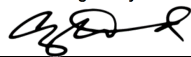


IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed and delivered this Agreement with the intent to be bound as of the Effective Date.

TOWN OF APEX

PREMIER INTERNATIONAL ENTERPRISES, LLC

Signature: _____

DocuSigned by:
Signature: 
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Printed: _____

Printed: Craig M. Wood

Title: _____

Title: CEO

Date: _____

Date: 4/10/2023 | 5:31 PM CDT

This instrument has been preaudited in the manner required by the Local Government Fiscal Control Act.

Antwan Morrison, Finance Director