Software License

APPX Utility - Release 5.0.2

Important!
Please read this carefully
before you click on the Accept button

Definitions:

- **"Software License Agreement (SLA)"** shall mean this **Software License** document and the associated **License Key** document collectively.
- **"License Key"** shall mean the software registration document and the information contained therein. The **License Key** identifies the specific components and features of the **Licensed Software** which are licensed subject to the terms and conditions of this **SLA**. The **License Key** also identifies specific limitations relating to the use of the **Licensed Software**. A valid **License Key** must be installed on each **Licensed Computer** on which the **Licensed Software** is installed to activate the various licensed components and features of the **Licensed Software**.
- **"Licensed Software"** shall mean the various licensed components and features of Release 5.0.2 of the APPX Utility software product and all related documentation. The APPX Utility software is licensed not sold. The various components and features of Release 5.0.2 of the APPX Utility include but are not limited to the APPX Design Environment, the APPX Runtime Environment, the APPX System Administration Utility, the APPX Database Management Utility, the APPX Reportwriter, the APPX Desktop Client, the APPX ODBC driver, and the APPX database interfaces. For the purposes of this **SLA**, the specifically licensed components and features and the numbers of authorized users are identified in the related **License Key**.
- **"Licensed Computer"** shall mean the computer systems, either physical or virtual, on which the various components and features of the **Licensed Software** are authorized to be installed and run. For the purposes of this **SLA**, the **Licensed Computer** shall be the specific computer systems identified by type and serial numbers in the **License Key**.
- **"Licensee"** shall mean the entity that is bound by this **Software License Agreement** as a consequence of electronically accepting the terms and conditions of this **SLA** pursuant to the download, installation, and use of the **Licensed Software**. For the purposes of this **Software License Agreement**, the **Licensee** shall be the entity identified as **Licensee** in the **License Key**.

You must accept the terms and conditions of this **SLA** in order to proceed with the installation of the **Licensed Software** and **License Key**. By clicking on the Accept button and installing the **Licensed Software** and the related **License Key**, you are explicitly binding the **Licensee** to the terms and conditions of this **SLA** subject to the limitations included in the related **License Key**. Do not click on the Accept button unless you are the **Licensee** or you are authorized to accept this **SLA** on behalf of the **Licensee**.

1. **GRANT OF LICENSE.** APPX Software, Inc. ("**ASI**") grants the entity identified on the **License Key** as **Licensee** a non-exclusive, non-transferable, limited license to use the **Licensed Software**. This grant of license shall only be valid in conjunction with the issuance of a valid, authorized **License Key** and is subject to specific limitations included in the **License Key**. The **License Key** must be installed on the **Licensed Computer** to activate the **Licensed Software**.

2. **LICENSE KEY.** The license granted is subject to specific limitations which are included in the **License Key**.

   a. **Limitations -** The limitations included in the License Key include:

      i. **LICENSEE**. The **License Key** identifies the **Licensee** to whom this license is granted.

      ii. **LICENSE TYPE**. The **License Key** identifies the type of license that is granted. The license types and the specific limitations that apply follow:

         - Type 1: Multi-User Permanent

- o Perpetual license (no expiration date)
- o Individual components of the licensed software may have expiration dates
- Type 2: Application Service Provider
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license
  - o Allows other parties to process their data on the **Licensed Computer**
- Type 3: Multi-User Temporary
  - o Temporary license
- Type 4: Single-User Permanent
  - o Perpetual license (no expiration date)
  - o Individual components of the licensed software may have expiration dates
- Type 5: Single-User Temporary
  - o Temporary license
- Type B: VAR Business
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license (maximum of 1 year)
  - o May be installed on the reseller or consultant's computer for the purpose of processing the reseller/consultant's business data
- Type D: VAR Demonstration
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license (maximum of 1 year)
  - o May be installed on the reseller or consultant's computer for the purpose of demonstrating software to customers and prospects
- Type E: Temporary Evaluation
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license (maximum of 30 days)
  - o May be installed on a customer's or prospect's computer system for the purpose of allowing the customer or prospect to evaluate software.
- Type M: VAR Marketing
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license (maximum of 7 days)
  - o May be installed on a customer's or prospect's computer system for the purpose of allowing the reseller or consultant to demonstrate software.
- Type P: Promotional
  - o May be perpetual or temporary
  - o Individual components of the licensed software may have expiration dates
- Type S: Secondary
  - o Temporary license (maximum of 1 year)
  - o May be used for development, testing, and standby systems.
  - o May be used as a temporary substitute system for another **Licensed Computer**
- Type V: VAR Development
  - o Available only to authorized APPX Resellers/Consultants
  - o Temporary license (maximum of 1 year)
- Type Z: Emergency System Down
  - o Available to all Licensees with current APPX software support
  - o Temporary license (maximum of 7 days)

iii. **LICENSED SOFTWARE**. The **License Key** identifies the specific components and features of the **Licensed Software** for which a license is granted and the number of licensed users respectively.

iv. **LICENSED COMPUTER**. The **License Key** identifies the **Licensed Computer** on which the **Licensed Software** is authorized to be installed and run.

v. **LICENSE TERM**. The **License Key** identifies the effective date and the expiration date of the license granted. If an expiration date is not specified, the term of the license granted is perpetual. If an expiration date is specified, then this **SLA** is effective through that date after which it is terminated. The effective date of the license is that specified on the **License Key**, or the date of installation of the software, whichever is later.

vi. **LICENSED USERS**. The **License Key** identifies the number of licensed users authorized to be concurrently using the **Licensed Software**.

- Limited Access User Rights, if specified on the **License Key**, carry certain limitations and restrictions. Users logging in under Limited Access User Rights are allowed no more than 30 minutes of continuous operation, must be casual, occasional, transient users, may direct output only to a local (non-network) printer, and may not have access to Application Design, System Administration, or Database Management utilities.

b. **Revisions** – **ASI** may issue a revised **License Key** for the **Licensed Software** as a consequence of future business transactions between **Licensee** and **ASI** or its authorized resellers. **Licensee** agrees that any such revised **License Key** shall supersede all previously issued **License Keys** for the **Licensed Software** and shall automatically be incorporated as an amendment to this **SLA** as of the effective date of the revised **License Key** replacing any previously issued **License Key**. **Licensee** agrees to install any revised **License Key** on the **Licensed Computer** on the effective date of the revised **License Key**.

3. **LICENSE ENFORCEMENT**. The **Licensed Software** incorporates technology to electronically enforce the license limitations included in the **License Key**. **Licensee** shall not take any steps to circumvent, disable, or otherwise interfere with the electronic enforcement of the terms of this **SLA**.

4. **OWNERSHIP.** Nothing in this **SLA** transfers to **Licensee** title to any portion of the **Licensed Software** and the related documentation.

a. The **Licensed Software** is owned by ASI and/or its licensors. Title to the **Licensed Software** and all associated intellectual property rights are retained by ASI and/or its licensors.

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c. The **Licensed Software** incorporates technology and software licensed by third parties. The Limited Warranty, disclaimer, and exclusions of paragraph 7 also apply to third party software which is incorporated into the **Licensed Software**.

d. No right, title, or interest in or to any trademark, service mark, logo or trade name of **ASI** or its licensors is granted under this **SLA**.

5. **USE**

a. **Licensee** may use the **Licensed Software** only on the **Licensed Computer**, only by the specified number of users, and only to process its own data, not the data of others, except as allowed by Type 2 licenses.

b. **Licensee** acknowledges the acceptance of the **Licensed Software** upon installation on the **Licensed Computer**.

c. **Licensee** may, at its own expense, in the ordinary course of business and in good faith, copy the **Licensed Software** only for archival or backup purposes and only if **Licensee** includes in and on each partial or complete copy of the **Licensed Software** all notices of copyright and proprietary rights appearing in and on the **Licensed Software**.

d. **Licensee** shall not decode, disassemble, decompile, or in any manner reverse engineer the **Licensed Software**.

e. **Licensee** shall not disclose or transfer any copy of any portion of the **Licensed Software** to any person except as specifically permitted in this **SLA**.

f. **Licensee** shall not copy, disclose, or transfer the design of or the trade secrets embodied in any portion of the **Licensed Software**.

g. **Licensee** shall not transfer or disclose any portion of the **Licensed Software** to any person if **Licensee** has reason to believe that such person may attempt to learn, use, or disclose the design of or the trade secrets embodied in the **Licensed Software**.

h. **Licensee** shall not allow the **Licensed Software** to become subject to any claims, liens, encumbrances, or security interests except those of **ASI**.

6. **COPYRIGHT, PATENT, AND TRADE SECRET INDEMNITY. ASI** warrants that the **Licensed Software** does not infringe upon any valid U.S. copyright or patent or violate the trade secret rights of any third party. In the event of a claim that the **Licensed Software** infringes upon or violates copyright, patent, or trade secret rights, **ASI** may, at its sole option, either defend or settle such claim, or terminate this **SLA** and refund an equitable portion of the License Fee paid for **Licensee's** use of the **Licensed Software**. **ASI** shall be subject to the foregoing obligations only if (a) **Licensee** notifies **ASI** promptly in writing of any suit or claim, whether in the form of a lawsuit or otherwise, against **Licensee**; (b)

Licensee permits **ASI** to defend, compromise, or settle such claim and gives **ASI** all available information, assistance, and authority to enable **ASI** to do so; and (c) **Licensee** is not in default under this Agreement. **ASI** shall not be responsible for any compromise or settlement made without its written consent. **ASI's** indemnity obligations shall not apply to any infringement arising out of use of the **Licensed Software** in any manner not authorized by this **SLA** or in combination with other software or articles where such infringement would not have occurred but for the use of the **Licensed Software** in combination with such other software or articles.

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8. **TERMINATION.** ASI may terminate this **SLA** for breach by provision of thirty (30) days advance written notice except in the case of an "Injuring Event," in which case this **SLA** shall terminate effective immediately upon provision of written notice of termination. As used herein, "Injuring Event" means breach by **Licensee** of the restrictions on use of the **Licensed Software**. **Licensee** agrees that any act or omission that constitutes an Injuring Event will result in immediate, irreparable damage to **ASI** for which no adequate remedy at law exists, in part because quantification of damages is not possible, and will entitle **ASI** to temporary and permanent injunctive relief from **Licensee's** breach of the foregoing obligations. This **SLA** shall terminate effective immediately without notice upon insolvency, bankruptcy, liquidation, reorganization, or dissolution of **Licensee**; appointment of a temporary or permanent receiver for all or any part of **Licensee's** property; or a general assignment by **Licensee** for the benefit of creditors. **ASI** expressly reserves the right to terminate the License immediately and without prior notice if it has not received full payment from Licensee in accordance with the terms of the License Key. Provided that Licensee has fully paid all amounts due and owing to ASI and is a customer in good standing, Licensee shall have the right to terminate the License for any reason, upon giving ASI at least thirty days prior written notice. Upon termination of this **SLA**, **Licensee** shall immediately pay all amounts owed pursuant to this **SLA** and immediately destroy or return to **ASI** all copies of the **Licensed Software** and/or Documentation in the possession, custody or control of **Licensee**, its owners, or employees. Licensee acknowledges and agrees that its payment obligations and other obligations under licenses granted pursuant to this agreement shall survive termination of this agreement. Termination by **ASI** of this agreement shall not give rise to any liability for compensation, reimbursement, or damages for loss of good will, clientele, prospective profits, or anticipated business or commitments of any kind in connection therewith or otherwise.

9. **WAIVER.** Waiver by one party of any breach or any provision of this **SLA** shall not operate or be construed as a waiver by that party of any subsequent breach.

10. **ASSIGNMENT.** Neither the **SLA** nor the **Licensed Software** may be leased, sublicensed, sold, assigned, pledged, transferred or otherwise disposed of, on a temporary or permanent basis, without the prior written consent of **ASI**.

11. **EXPORT REGULATIONS.** The software and technical data is subject to the United States export control laws and may be subject to export or import regulations in other countries. **Licensee** agrees to comply strictly with all such laws and regulations and acknowledges and accepts the responsibility to obtain such licenses to export, re-export, or import as may be required before or after delivery. **Licensee** shall not export the **Licensed Software** or the technical data outside of the country in which it received it without obtaining proper authorization from the U. S. Department of Commerce, Office of Export Licensing.

12. **GOVERNING LAW.** This **SLA** shall be governed by, and construed in accordance with the substantive laws of the State of Florida (excluding choice-of-law rules). Any dispute arising under this **SLA** which cannot be resolved by private agreement between the parties, shall, at the option of **ASI**, be committed to binding arbitration; or ASI may elect to waive binding arbitration, whereupon the disputed matter would then be submitted to the Fourth Judicial Circuit Court

of Duval County, Florida, and the parties consent and submit to the personal or other legal entity jurisdiction of such court, both as to subject matter and as to the parties. The prevailing party in any litigation, arbitration, or other proceedings arising out of this **SLA** shall be reimbursed for all reasonable costs and expenses incurred in such proceedings, including reasonable attorneys' fees.

13. **SEVERABILITY.** If any term, covenant, condition, or provision of this **SLA** is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this **SLA** shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

14. **ENTIRE AGREEMENT.** This **SLA** constitutes the entire agreement between the parties which is effective during the term of this **SLA** and which concerns the subject matter of this **SLA**. This **SLA** may be altered, amended, or modified only by a written agreement executed by authorized representatives of both parties. However, in the event that Licensee has previously executed a written **SLA** which governs *this specific version* of the **Licensed Software**, the terms of that written **SLA** shall apply in lieu of this **SLA**. In that case, clicking on the Accept button will allow you to proceed with the installation of the **Licensed Software** but will not change or otherwise modify the terms and conditions of the previously executed **SLA**. Otherwise, this **SLA** supersedes any and all prior agreements, proposals, and discussions, whether written or oral, which purport both to be effective during the same term and also to concern the same subject matter.

For inquires regarding this agreement, please contact: APPX Software, Inc., 11363 San Jose Blvd., Suite 301, Jacksonville, Florida 32223, USA