

## SOFTWARE LICENSE TERMS AND CONDITIONS

The Software License Terms and Conditions (the “*Agreement*”) is effective as of the Effective Date of a signed Subscription Agreement.

### W I T N E S S E T H:

**WHEREAS**, aRefChex is in the business of licensing and supporting a software intended to assist employers in conducting self-directed, self-help automated reference checks (the “*Software Product*” as hereinafter defined);

**WHEREAS**, Employer desires to utilize the Software Product to conduct its own reference checks;

**WHEREAS**, aRefChex wishes to grant Employer a limited, non-exclusive license to use the Software Product for the aforementioned purpose subject to the terms and conditions stated herein;

**NOW, THEREFORE**, in consideration of the above premises and the covenants and agreements set forth herein, the Parties agree as follows:

**1. Definitions and Interpretation.** In addition to words and expressions otherwise defined in this Agreement, the following words and expressions have the following meanings, unless the context otherwise requires.

1.1. “*Best efforts*” means the efforts that a reasonable business person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as reasonably practicable; provided, however, that a Party required to use best efforts under this Agreement will not thereby be required to take any action that would result in a material adverse change in the benefits to such Party under this Agreement, to make any material change to its business, to incur any material fees or expenses (other than normal and usual filing fees, processing fees and incidental expenses), or to commence any proceeding.

1.2. “*Copyright(s)*” means all United States or foreign registered and unregistered copyrights (whether in published or unpublished works) and all extensions and renewals thereof, and any copyrightable subject matter associated with or related to or necessary to the exploitation of the items referred to in clauses (iii) or (iv) of the definition of “*Intellectual Property*”).

1.3. “*Documentation*” means aRefChex’s proprietary printed and electronic written materials in support of the Software Product which may include, but are not limited to, user instructions, system documentation, training manuals, and any other printed or visually-perceptible documentation; in each case as such documentation, procedures, instructions, manuals, or help text may be amended or updated from time to time.

1.4. “*Intellectual Property*” means all intellectual property rights in any and all media, anywhere in the world, including: (i) all Marks; (ii) all Patents; (iii) all works of authorship (whether or not copyrightable), including all existing or forecasted pictorial works, graphic works, mask works, websites (and the website content contained therein), (iv) all Software, (v) all Copyrights; (vi) all Trade Secrets; (vii) all domain names, (viii) all moral rights, rights of privacy and publicity, attribution and integrity, (ix) all goodwill in each of the foregoing, (x) all rights to sue for damages for past, current and future infringements (including passing off, misappropriation, unfair

competition, and dilution) of any of the foregoing; and (xi) all documentation and tangible embodiments of or relating to any of the foregoing.

1.5. “**Mark(s)**” means any names, assumed fictional business names, trade names, registered, unregistered and common law trademarks, service marks, trade dress, logos, slogans, symbols, emblems, colors, identifications, designations and other attributes, designations of origin or indicia, including registrations and applications therefore, and all goodwill associated with or symbolized by any of the foregoing.

1.6. “**Patent(s)**” means any patents, patent applications (including provisional applications), foreign counterparts, continuations, continuations-in-part, divisions, extensions, reexaminations, and reissues thereof.

1.7. “**Services**” means those services to be provided by aRefChex in support of the Software Product.

1.8. “**Software**” means all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, formats, templates, menus, buttons and icons and all files, data, databases, compilations, materials, manuals, design notes and other items, technology supporting the foregoing, including but not limited to any temporary files or process required for the delivery of aRefChex Software via the internet, and documentation related thereto or associated therewith.

1.9. “**Software Product**” means aRefChex’s proprietary Software, which supports employers’ efforts to conduct self-directed, self-help automated reference checks.

1.10. “**Support**” means performing troubleshooting and problem resolution as identified by Employer. Assistance supplementing the documentation may be available to the Employer designated Administrator responsible for the use and management of the Software.

1.11. “**Trade Secrets**” means any idea, invention, whether or not patentable, know-how, trade secret, confidential or proprietary information, Client list, technique, modification, formula, discovery, technical information, improvement, data, process, technology, plan, design, concept, work in progress, work in development, work in production, drawing, or blue print, that (a) in the hands of a competitor, would give the competitor a business advantage, or (b) if disclosed would reasonably be expected to have a material adverse effect.

In this Agreement unless otherwise specified: (a) headings in this Agreement are for information only and are to be ignored in construing the same; (c) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified and shall be counted from the day immediately following the date from which such number of days are to be counted; (d) references to “dollars” or “\$” shall mean United States Dollars; and (e) language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

**2. License for Software Product.** Provided Employer complies with the terms of this Agreement, throughout the Term, aRefChex hereby grants to Employer a limited, non-exclusive license to use the Software Product to conduct self-directed, self-help automated reference checks.

**3. Performance of Services by aRefChex.** In consideration of Employer's payment of the fees and consideration provided for herein, aRefChex shall perform the Services described herein to facilitate Employer's use of the Software Product. Such Services shall include, but not be limited to, using its Best Efforts to:

3.1. Provide training information and tools consistent with those provided to customers similar in nature to Employer;

3.2. Provide initial, basic training to Employer on the operation of the Software Product; and

3.3. Provide technical support to Employer staff and to assist the Employer staff if necessary in resolving technical issue.

**4. Charges and Payments.**

4.1. Fees. During the Term and in consideration of the delivery to Employer of the Services and the grant of the license contained in this Agreement, Employer agrees to pay to aRefChex the fees described in and pursuant to the terms set forth in The Subscription Agreement. Prices set forth in the Subscription Agreement are effective for one year, after which aRefChex may change prices at any time upon providing prior written notice.

4.2. Taxes. All applicable income and other taxes are in addition to and exclusive of the rates and fees described in The Subscription Agreement and shall be borne by the Party responsible for the payment of such taxes as required by applicable law. Notwithstanding the foregoing, in the event sales and use taxes are owed with respect to this Agreement under applicable law, aRefChex shall collect from Employer and Employer shall pay to eRefChex all such taxes in each applicable invoice.

4.3. Summary and Payment. Within thirty (30) business days after the close of each service period during the Term, aRefChex will submit to Employer, a summary and invoice detailing the use of the Software Product by Employer. The invoice is due upon receipt and shall be paid no later than within thirty (30) business days from the receipt by Employer.

4.4. Suspension of Service. aRefChex may suspend Employer's use of the Software Product, upon written notice delivered pursuant to the terms hereof to the attention of the individual Employer signator below, if Employer fails to pay the invoice in accordance with this Section 4 and does not cure such failure within five (5) business days following such notice. aRefChex may also suspend Employer's use of the Software Product immediately if it determines—in its sole discretion—that Employer is using the Software Product in a manner that violates applicable law.

**5. Respect for Applicable Laws.** Each party agrees to abide by all laws that apply to it. More specifically, aRefChex shall comply with all laws that apply to it as a software vendor. Employer shall comply with all laws that apply to it as an Employer. Employer accepts full responsibility for ensuring that it only uses the Software Product in a manner that complies with

applicable laws, including but not limited to Title VII, the Americans with Disabilities Act, state “ban the box” laws, and other laws that apply to employers.

**6. Security.** aRefChex represents and warrants that the Software Product will not contain Harmful Code or Vulnerabilities upon delivery. For purposes of this warranty “Harmful Code” includes any and all instructions designed to prevent a computer from producing intended results or to cause a computer to produce unintended results, including, but not limited to the following: instructions designed to halt or disrupt the operation of a computer program at an arbitrary time (“time bombs”) or upon the execution of an arbitrarily designated instruction (“logic bombs”); instructions designed to cause the computer to duplicate these instructions and retransmit those instructions to others, with or without additional disabling effects or instructions designed to cause the computer to erase its own data files (“viruses/worms”); instructions designed to override security features and facilitate access to the computer by unauthorized users (“back doors,” “trap doors,” and “undocumented passwords”) or to place the operation of the computer under the control of unauthorized remote users (“Trojan horses”). “Vulnerability” means a condition in the instructions of the software, whether consistent with its specifications or not, that renders the computer on which the software is operating susceptible to unauthorized access and use. Notwithstanding the foregoing, aRefChex cannot warrant how the Software Product will interact with any component of Employer’s existing environment and Employer shall be solely responsible for investigating the same and ensuring that the integration of the Software Product in its existing environment will not result in any Harmful Code or Vulnerabilities.

**7. Confidentiality.**

7.1. Protection of Information. Both Parties may provide information that is considered confidential and proprietary to the other Party. Each item of information that is disclosed by a Party (“**Discloser**”) and which is identified as confidential in accordance with this Agreement shall be held in confidence by the receiving Party (“**Recipient**”) and used only as necessary for the performance of this Agreement. The Recipient may only disclose Confidential Information to those of the Recipient’s subsidiaries, affiliates, employees, and agents who need to know such information for their work in connection with this Agreement and who have previously agreed to be bound by terms and conditions substantially similar to those of this Section 7.

7.2. Standard of Care. Recipient shall protect all Confidential Information and prevent the unauthorized use, dissemination, or publication of all Confidential Information by using the same degree of care as Recipient uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care.

7.3. Exclusions. Notwithstanding anything to the contrary contained in this Agreement, nothing contained herein or therein imposes any confidentiality obligation upon Recipient with respect to information that:

- a. is required to be disclosed by order of a court or a regulatory authority, provided Discloser is given reasonable advance notice and an opportunity to seek a protective order; or

b. is disclosed by Recipient with Discloser's prior written approval, but only to the extent of such approved disclosure.

## **8. Warranty.**

8.1. aRefChex represents and warrants that: (i) it is a corporation duly organized, validly existing and in good standing; (ii) it has all requisite corporate power and full legal right to enter into this Agreement and to perform all of its agreements and obligations under this Agreement in accordance with its terms; (iii) to the knowledge of aRefChex, the Software Product, Documentation, and Services do not materially infringe upon any Intellectual Property or other rights of any third party; and (iv) that, except as set forth herein, the Services and Software Product do not contain, and throughout the Term will not contain, any Harmful Code or Vulnerabilities.

8.2. aRefChex shall use Best Efforts to ensure that the Software Product is delivered free from defects in workmanship and materials and without any known programming errors that materially affect the performance of the Software Product.

8.3. aRefChex does not warrant that the functions contained in the Software Product will meet Employer's requirements or that the operation of the Software Product will be uninterrupted or error-free. Employer assumes full responsibility for the selection of the software to achieve Employer's intended results and for the installation, use, and results obtained from the Software Product. Any functionality lacking in the Software Product which is expressly stated in the Documentation shall not be a defect hereunder.

8.4. Employer acknowledges being sufficiently acquainted with the Software Product and its documentation prior to execution of this Agreement and is fully aware of the Software Product's functionalities. Employer is solely responsible for determining whether the Software Product is fit for its intended use of the Software Product.

**9. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES INCURRED BY THE OTHER PARTY AND ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE LOSS OF GOOD WILL AND LOST PROFITS OR REVENUE, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN AGREEMENT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL AREFCHEX'S LIABILITY FOR DAMAGES TO EMPLOYER OR ANY OTHER PERSON EVER EXCEED THE AMOUNT OF FEES PAID TO AREFCHEX IN ANY TWELVE MONTH PERIOD UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF CLAIM.

**10. Indemnification.** Employer shall indemnify and hold harmless aRefChex, its affiliates, and subsidiaries and their respective officers, directors, employees, agents, and insurers from and against any and all damages, penalties, losses, liabilities, judgments, settlements, awards, costs, and expenses (including reasonable attorneys' fees and expenses) arising out of or in connection with any claims, assertions, demands, causes of action, suits, proceedings or other actions, whether at law or in equity ("Claims") related to: (i) any breach by Employer of this Agreement or addenda

to this Agreement, (ii) Employer's violation of applicable laws or ordinances, or (iii) Employer's negligence, misconduct, recklessness, errors or omissions.

## **11. Term and Termination.**

11.1. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated by either Party pursuant to this Section 11 (the "**Term**"). Either Party may terminate this agreement for any reason or no reason upon three (3) months written notice to the other Party. Either Party may also terminate this Agreement if the other Party materially breaches any of the material terms of this Agreement and fails to cure such breach within (i) ten (10) days in the case of nonpayment of monies due; or (ii) forty-five (45) days in the case of all other breaches, after receipt of written notice of such breach.

11.2. Effect of Termination. Upon the termination of this Agreement, aRefChex shall be relieved of its obligation to deliver to Employer the Services, except facilitating access to information for which Employer already has tendered to aRefChex the fees and are outstanding (in process but not yet completed). Employer will be provided with 30 (thirty) days access to the account (no facility to create new requests) for printing/exporting data within the functions of the Software. Employer shall pay all fees owed at the time of termination both for Services and for the license granted herein.

11.3. Termination, Confidential Information. Upon termination both parties shall return or destroy, and provide a certificate of destruction of such, to the other party of all Confidential Information which may have been conveyed to the other in the course of the relationship.

## **12. Miscellaneous**

12.1. Excerpts and Headings. When the provisions of this document or certain of these provisions appear on the back of a document other than this Agreement, they constitute a reminder of these agreement conditions. Headings are included for ease of reference only and shall in no way affect the interpretation of the provisions of this Agreement.

12.2. Governing Law and Forum Selection. The validity of this Agreement and the rights, obligations and relations of the Parties hereunder shall be construed and determined under and in accordance with the substantive laws of the State of Wisconsin without regard to conflict of laws principles. All claims and disputes arising under or in connection with this Agreement, whether for or in respect of, breach of Agreement, tort, equity, or otherwise, shall be adjudicated exclusively in federal or state courts located in Wisconsin. Both parties agree that personal jurisdiction exists in Wisconsin and waive any potential argument to the contrary.

12.3. Assignment and Transfer. The Parties are not authorized to transfer this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, upon the merger, consolidation, sale, or transfer of all or substantially all of a Party's assets or capital equity, this Agreement shall be assigned by operation of law and the assignee shall comply with the obligations of its assignor under this Agreement. Any attempt by a Party to transfer this Agreement without the prior written consent of the other Party shall be null and void.

12.4. Entire Agreement. This Agreement in conjunction with a signed Subscription Agreement sets out all the terms agreed upon between Employer and aRefChex regarding the

subject matter hereof, and takes precedence over all agreements, covenants, promises and representations relating thereto.

12.5. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of aRefChex and Employer as well as their respective successors and assigns.

12.6. Effect of Waivers. No waiver of any provision or condition of this Agreement or covering any breach or default thereof shall be effective unless it is set forth in writing and signed by the Party making such waiver, and the latter shall not constitute a waiver of any provision or condition of the Agreement or any subsequent breach or default of the same or a similar nature. The failure or delay by a Party in enforcing, or insisting upon strict performance of, any provision of this Agreement shall not be considered to be a waiver of such provision or in any way effect the validity of this Agreement or to deprive a Party of the right, at any time or from time to time, to enforce or insist upon strict performance of that provision or any other provision of this Agreement.

12.7. Severability. The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect or invalidate any other provision hereof.

12.8. Notice. Except as otherwise agreed to in writing by the Parties, any notice required or authorized by this Agreement to be given by the Employer to aRefChex shall be sent electronically by email to support@arefchex.com. Any notice sent electronically by email shall be deemed to have been received by the Party upon delivery to the email address.

12.9. Relationship of Parties. The Parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the Parties. No Party has the authority to bind the other or to incur any obligation on its behalf.

12.10. Force Majeure. Except for a Party's obligation to pay fees due hereunder, neither Party will be liable for any failure or delay in performance if the failure or delay is due to any war, riot, revolution, explosion or sabotage, accident, casualty accident, casualty beyond the reasonable control of such party and its employees, change in government law, order or regulation, or interruption of supply or scarcity of services, software or hardware needed to develop, implement, operate, or maintain the Software Product, including but not limited to the effects of viruses and denial of service attacks.

12.11. Severability. If any term of this Agreement, or part thereof, not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, then it is the intention of the parties that the remaining terms hereof, or part thereof, shall constitute their agreement with respect to the subject matter hereof, and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid, or unenforceable provision of this Agreement shall be replaced by a valid provision which will implement the commercial purpose of the illegal, invalid or unenforceable provision.

12.12. Survival. Sections 8.3, 9, 10, and 12 shall survive termination of this Agreement.