

This RipeTrack Software Terms and Conditions (“**Conditions**”) forms an agreement between the customer accessing, downloading, installing, or otherwise using (the terms “**use**” and “**using**” will refer to any of the foregoing) RipeTrack Software (such customer, the “**Customer**”) and Apeel Technology, Inc., (“**Apeel**”), the supplier of the RipeTrack Software. These Conditions are an integral part of, and are incorporated by reference into, the RipeTrack Subscription Agreement Customer enters into with Apeel (together with these Conditions, collectively the “**Agreement**”), and is effective as of the date of such RipeTrack Subscription Agreement (the “**Effective Date**”). Each of Apeel and Customer shall individually be referred to as a “**Party**” and jointly as the “**Parties**”. The Agreement sets forth the terms and conditions that govern the provision and use of the Services.

**BY USING THE RIPETRACK SOFTWARE, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ, ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS SET OUT IN THE AGREEMENT. IF CUSTOMER DOES NOT ACCEPT AND AGREE TO BE BOUND BY THE AGREEMENT, CUSTOMER WILL IMMEDIATELY CEASE ANY FURTHER USE OF THE RIPETRACK SOFTWARE. CUSTOMER REPRESENTS AND WARRANTS TO APEEL THAT CUSTOMER HAS THE CAPACITY TO ENTER INTO THE AGREEMENT. IF CUSTOMER IS USING THE RIPETRACK SOFTWARE ON BEHALF OF ANOTHER PERSON OR ENTITY, CUSTOMER HEREBY REPRESENTS AND WARRANTS TO APEEL THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH PERSON OR SUCH ENTITY TO THE AGREEMENT.**

1. **DEFINED TERMS.** “**Hardware**” means the hardware, if any, provided to Customer by Apeel (by means of example only, a tablet and/or Apeel Spectrometer), and “**Software**” means Apeel’s proprietary RipeTrack software any other computer software that is pre-installed on the Hardware, available online as a software service by Apeel and/or as a downloadable application, or that Apeel otherwise provides, including third-party software. “**Product**” and/or “**Service**” mean the Hardware, Software, and any related documentation, training, and technical support, provided by Apeel to Customer. “**Customer Data**” means any data or information entered into the Software by Customer, or otherwise provided by Customer in connection with the Agreement.
2. **USER ACCOUNTS.** The Customer facilities at which the Product will be used and the number of Customer employees (“**Authorized Employees**”) who will access and use the Product each are set forth in the RipeTrack Subscription Agreement entered into by Apeel and Customer. Customer will restrict access to the Product to its Authorized Employees. Customer and Apeel may agree to add or remove Authorized Employees and/or approved facilities from time to time in writing (which may be via email). Customer shall ensure that Authorized Employees comply with the Agreement and only use the Service through Customer’s User Accounts.
3. **SOFTWARE LICENSE; FEEDBACK.** Subject to the terms and conditions of the Agreement, Apeel hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable license to access and use the Software solely to the extent permitted herein by the Authorized Employees. From time to time, Customer may provide feedback to Apeel concerning the functionality and performance of the Product, or as reasonably requested by Apeel, including identifying potential errors and improvements (“**Feedback**”). Customer hereby assigns to Apeel all right, title, and interest in and to the Feedback, and agrees that Apeel may use the Feedback without any obligation or restriction.
4. **DATA OWNERSHIP; PRIVACY.** With the exception of any applicable third party rights, Customer shall exclusively own all right, title and interest in Customer Data. Notwithstanding the foregoing, Customer hereby grants to Apeel a non-exclusive, irrevocable, perpetual, transferable, sublicenseable, fully paid-up, global license to access and use, modify, and/or distribute the Customer Data, in whole or in part, with no restrictions; *provided, however, that*, to the extent any Customer Data would reasonably be expected to identify any individual or proprietary Customer information, Apeel will use good faith efforts to anonymize and aggregate such portion of Customer Data. Without limiting the generality of the foregoing, Customer agrees that Apeel may use Customer Data to provide the Service to Customer and in order to make improvements and updates to the Software and Service. Apeel is committed to protecting user personal information and their right to privacy. The Service does not collect any unique or personally identifying information about Authorized Employees (such as their name, email address, etc.), except if/when they were to specifically and knowingly provide such information. By means of example, an email address may be required in order to create a User Account. Apeel does not otherwise require users to share any personal information in order to use the RipeTrack Service. If there are any questions or concerns about Apeel’s practices with regards to personal information, please contact us at [privacy@apeelsciences.com](mailto:privacy@apeelsciences.com).
5. **FEES.** Customer will pay Apeel the non-refundable fees set forth in the RipeTrack Subscription Agreement in accordance with the terms therein (“**Fees**”) and without offset or deduction. Except as otherwise provided in the RipeTrack Subscription Agreement, Apeel will issue monthly invoices to Customer during the Term, and Customer will pay all amounts set forth on any such invoice no later than thirty (30) days after the date of such invoice.
6. **TERM.** The Agreement will begin on the Effective Date and continue in effect until the expiration or termination of the last applicable RipeTrack Subscription Agreement (the “**Term**”). Apeel may immediately terminate the Agreement if Customer breaches any provision of the Agreement. Upon any expiration or termination of this Agreement, unless otherwise agreed upon by Apeel, Customer will return the Product and any other materials provided to Customer by Apeel, the license granted under this Agreement will immediately terminate, and Customer will discontinue all use of the Product. Sections 1, and 3-11 will survive termination or expiration of these Conditions.
7. **OWNERSHIP AND RESTRICTIONS.** Apeel owns all right, title, and interest, including all intellectual property rights, in and to the Product, including any improvements, modifications, and enhancements to it. Except for those rights expressly granted in the Agreement, no other rights are granted, either express or implied, to Customer. Customer will not: (a) modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or copy the Product; (b) permit anyone other than the Authorized Employees to access the Product; and (c) use the Product or any other Confidential Information to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Product. Customer shall comply with any third-party terms applicable to the Hardware or Software. Customer will promptly notify Apeel if Customer knows or

suspects that: (i) access to the Service has been compromised or (ii) the Hardware has been lost or damaged. Customer expressly acknowledges that Apeel reserves the right to suspend, deactivate, or replace the Customer User Account if it determines that the Customer User Account may have been used for an unauthorized purpose.

8. **CONFIDENTIALITY.** Customer will maintain the confidentiality of and not disclose to any third party: (a) the terms of the Agreement, (b) all non-public information disclosed by Apeel to Customer under the Agreement, (c) any user identification and/or log in credentials to the Product, (d) the Product, or (e) all Feedback, all Product performance data, and all other information related to use of the Product ("**Confidential Information**"). Customer will only use such Confidential Information in its and its Authorized Employees' use of, or access to, the Product. The obligations in this Section 8 survive the expiration or termination of this Agreement.
9. **WARRANTY DISCLAIMER.** THE PRODUCT IS PROVIDED "AS IS". APEEL DOES NOT WARRANT THAT THE PRODUCT WILL OPERATE WITHOUT ERROR OR INTERRUPTION. APEEL SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, QUALITY, ACCURACY, AND FITNESS FOR A PARTICULAR PURPOSE.
10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL APEEL BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL, OR COST OF REPLACEMENT PRODUCTS, ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, INTELLECTUAL PROPERTY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT APEEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL APEEL'S AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT, WHETHER BY CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR OTHERWISE, EXCEED \$1,000. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
1. **MISCELLANEOUS.** This Agreement and all matters related to it will be governed by the laws of the State of California without reference to conflict of law principles. All disputes arising out of or related to it, will be subject to the exclusive jurisdiction of the state and federal courts located in Los Angeles County, California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts. Customer will not assign this Agreement, directly or indirectly, by operation of law or otherwise, without the prior written consent of Apeel. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the parties, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement is binding upon and will inure to the benefit of each of the parties and their respective successors and permitted assigns. This is the entire agreement between the parties relating to the subject matter hereof. No waiver or modification of this Agreement will be valid unless in writing signed by each party.