

## APEX Analytix SmartVM® API License and Terms of Use

By installing, accessing or otherwise using the APEX Analytix SmartVM® API (“**SmartVM API**”) within a software application or via our website, you accept and agree to these terms (the “**API Terms**”) with APEX Analytix, LLC (“**APEX**”, “**we**”, “**us**” or “**our**”). You represent and warrant that you have the authority to accept these API Terms on behalf of yourself, a company and/or other entity, as applicable. If additional terms apply to an application which uses the SmartVM API, to include but not limited to a Master SaaS Agreement, an Agreement to Access and Use, or a Software License Agreement (“**Additional Terms**”), both these API Terms and the Additional Terms shall apply (collectively referred to as the “**Terms**”). If a conflict arises between the Terms, the Additional Terms will prevail with respect to such conflicting terms only. As used in these API Terms, SmartVM API means any form of machine accessible application programming interface that provides access to an APEX service and any associated tools, including sample code that enables interactions with APEX’s services, and documentation that APEX makes available under these API Terms, and includes all elements, components and executables of such API; this may expressly include APEX Archimedes™ an advanced cognitive technology system with machine learning and IBM Watson® (a registered trademark of IBM Corporation), robotic process automation, as well as third-party data sources. The output or results of the SmartVM API shall be known as a “**SmartVM Validation**” and shall include all selected attributes for validation and enrichment within a SmartVM Data Lookup.

We may change, amend, or cancel these API Terms at any time without notice to you. You can always find the most recent version of the API Terms at <https://www.smartvmapi.com/sites/default/files/TermsOfUse.pdf>. Your use of the SmartVM API after the changes become effective means you agree to the new API Terms. If you do not agree to the new API Terms you must discontinue your use of the SmartVM API. Defined terms used herein may be found in the SmartVM Glossary.

### 1.0 SmartVM API License

- 1.1 Subject to your compliance with these API Terms, we grant you a limited, non-exclusive, non-sublicensable, non-transferable, non-assignable, revocable license to install, use and make calls to the SmartVM API, and to use the SmartVM Validation for your own internal business purposes.
- 1.2 The SmartVM Validation may be uploaded as data to your existing enterprise resource planning (“**ERP**”) system subject to all license terms with such ERP provider, and in no way does this license grant you a right to redistribute the SmartVM Validation to your ERP provider or any third-party.
- 1.3 You may use the SmartVM API only as expressly permitted in these API Terms.

### 2.0 General Restrictions on Use – In addition to other terms and conditions herein, you may not:

- 2.1 Use the SmartVM API to disrupt, interfere with, or attempt to gain unauthorized access to services, servers, or networks connected to or which can be accessed via the SmartVM API;
- 2.2 Use the SmartVM APIs in any way that threatens the integrity, performance or reliability of the SmartVM API or that could impair, harm or damage APEX, or any third-party’s use of the SmartVM API, or in any manner that works around any technical limitations in the SmartVM API;
- 2.3 Use the SmartVM API in any manner which would violate the Terms, or violate the rights of third-parties or expose APEX or its users to any legal liability;
- 2.4 Use the SmartVM API for any illegal purposes, or in any way that violates any applicable local, state, national, international or foreign law or regulation;
- 2.5 Transmit any content, data or information that is unlawful, abusive, harassing, tortious, defamatory, vulgar, libelous, invasive of another’s privacy right or right of publicity, or racially or ethnically objectionable;
- 2.6 Infringe, violate or otherwise misappropriate the intellectual property, privacy, publicity, or any other proprietary rights of any entity or person;
- 2.7 Remove any legal, copyright, trademark, or other proprietary notices contained in or on materials you access or receive pursuant to these API Terms, including but not limited to the APIs, documentation, SmartVM Validation, or any other output or results generated by the SmartVM API;
- 2.8 Copy, adapt, reformat, reverse-engineer, disassemble, decompile, decipher, translate or otherwise modify the SmartVM API through automated or other means;

- 2.9 Access the SmartVM API for the purpose of developing, or assisting in the developing of, a competitive product or service, or for copying its features or user interface, or for use in a product or service that competes with products or services offered by APEX;
- 2.10 Attempt to exceed or circumvent limitations on API calls and use; this includes but is not limited to creating multiple applications for identical or similar use or performing bulk operations with APIs that are designed for a single operation or call;
- 2.11 Distribute or redistribute, lease, rent, assign, repackage, rebrand, resell, sublicense or otherwise transfer or provide access to any APEX service or content derived from the SmartVM API except as expressly set forth herein; or,
- 2.12 Cause or permit any third-party to do any of the foregoing.

### **3.0 Ownership and Reservation of Rights**

- 3.1 The SmartVM API may be protected by copyrights, trademarks, service marks, international treaties, and/or other proprietary intellectual property rights of the United States and other countries.
- 3.2 APEX, and as applicable its suppliers and/or licensors retain all right, title and interest in and to the SmartVM API and the SmartVM Validation and any derivative works of the foregoing including all copyrights, patents, trade secrets, trademarks and other intellectual property rights. No other licenses or rights in any of APEX's intellectual property are granted herein. All rights not expressly granted herein are reserved by APEX, and as applicable, its suppliers and/or licensors.
- 3.3 These API Terms do not grant or imply any right to use or license to any trademarks, trade names or logos of APEX or other third-parties.
- 3.4 You hereby grant to APEX a non-exclusive, non-transferable license to use, upload, display, copy and store your data solely for the purpose of delivering the SmartVM Validation pursuant to these API Terms. You agree you shall have sole responsibility and liability for acquiring any and all authorization(s) necessary for use of your data as contemplated by these API Terms; and, ensuring that your data does not infringe or violate any patents, copyrights, trademarks, privacy rights and/or other intellectual property or proprietary rights, or misappropriate the trade secrets of any third-party.

### **4.0 Changes to the SmartVM APIs**

- 4.1 We may change or discontinue the availability of the SmartVM API at any time for any reason with or without notice. Such changes may include removal or modification of features, or the requirements of fees for previously free features. We may also impose limits on certain features and services or restrict your access to some or all of the features.
- 4.2 We may release subsequent versions of the SmartVM APIs and require that you use those subsequent versions, at your sole cost and expense. You acknowledge that once APEX releases a subsequent version of the SmartVM API, the prior version of such SmartVM API may stop working at any time or may no longer work in the same manner. Your continued use of the SmartVM APIs following a subsequent release will be deemed your acceptance of any modifications.

### **5.0 Disclaimer of Warranties and Limitation of Liabilities**

- 5.1 You acknowledge that the SmartVM API uses several third-party databases for vendor verifications and APEX is not responsible for the information, content, availability or performance of any database or verification source provided by a third-party. Further, third-party suppliers and/or licensors may include, but are not limited to, government agencies, foreign country commissions, global cooperatives and other similar sources; which from time to time may change the nature of the information, content, service or access that they provide. AS SUCH, APEX PROVIDES NO WARRANTY EXPRESS OR IMPLIED WITH RESPECT TO ANY THIRD-PARTY DATABASES AND MAKES NO REPRESENTATION REGARDING THE ACCURACY OF SUCH DATA, NOR THAT THE THIRD-PARTY DATA OR SMARTVM VALIDATION IS COMPLETE, ACCURATE, AND/OR UP TO DATE.
- 5.2 Your use of the SmartVM API is at your own discretion and risk, and you will be solely responsible for any damage that results from the use of any SmartVM APIs including, but not limited to any damage to your computer system or loss of your data.

- 5.3** YOU ACKNOWLEDGE AND AGREE THAT THE SMARTVM API IS PROVIDED “AS IS” AND “AS AVAILABLE,” AND WITHOUT WARRANTY OF ANY KIND, AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING ANY MATTER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, OR NONINFRINGEMENT ARE DISCLAIMED. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW, NOTHING IN THESE TERMS ARE INTENDED TO AFFECT THOSE RIGHTS, IF APPLICABLE. WITHOUT LIMITING THE FOREGOING, APEX DOES NOT WARRANT AGAINST THE LOSS OF DATA OR THAT THE SMARTVM API WILL BE UNINTERRUPTED, FREE FROM ERRORS OR DEFECTS, OR PROVIDED WITHOUT DELAY, OR THAT ERRORS OR DEFECTS ARE CAPABLE OF BEING CORRECTED.
- 5.4** THE TOTAL LIABILITY OF EACH PARTY TO THE OTHER IN RESPECT OF ALL CLAIMS UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED ONE HUNDRED US DOLLARS (US \$100). IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE, OR LOSS OR INACCURACY OF ANY DATA, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER OR NOT REASONABLY FORESEEABLE, INCURRED BY THE OTHER PARTY OR A THIRD-PARTY RELATING TO THESE TERMS, INCLUDING, WITHOUT LIMITATION, THE USE OF OR INABILITY TO USE THE SMARTVM API, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE.

## **6.0 Security and Data Protection**

- 6.1** You will implement technical and organizational measures necessary to meet requirements under applicable data protection laws and to reasonably protect any data you upload or provide through the SmartVM API.
- 6.2** You shall be responsible for the content of any data you upload or provide through the SmartVM API. You agree that you have collected and shall maintain and handle all data in compliance with all applicable data privacy and protection laws, rules, and regulations, as well as all applicable civil and criminal laws. In the event of a data breach by either party resulting from any aspect of the SmartVM API or any data processed through the SmartVM API, you will contact the APEX Security Team (<https://www.apexanalytix.com/privacy-policy>) without undue delay and within a reasonable time frame not to exceed forty-eight (48) hours and provide details of the data breach. You agree to refrain from making public statements (e.g. press, blogs, social media) without prior written and express permission from APEX in each instance as it relates to the SmartVM API or associated service.
- 6.3** APEX may transfer your data to the United States and elsewhere, but only as necessary to provide the service. The United States and other countries may not have the same data protection laws as the country from which you initially provided the data through the SmartVM API. By accessing the SmartVM API, you consent to the transfer of your data and the processing of such through the SmartVM API on servers based in the United States acknowledging that certain aspects of a call through the SmartVM API may take place in other countries from one or more third-party data sources.

## **7.0 Privacy and Confidentiality**

See the APEX Privacy Policy at <https://www.apexanalytix.com/privacy-policy> for disclosures relating to the collection and use of your personal data.

- 7.1** You may be given access to certain non-public information, software and specifications relating to the SmartVM API which is confidential and proprietary to APEX (“**Confidential Information**”). You may use the Confidential Information only as necessary in exercising your rights granted under these API Terms. You may not disclose Confidential Information to any third-party without APEX’s prior written consent. You agree that you will protect any Confidential Information from unauthorized use, access, or disclosure in the same manner that you would use to protect your own confidential and proprietary information.

## **8.0 Independent Development and Feedback**

- 8.1** APEX may aggregate data uploaded to the SmartVM API by you with data uploaded to the SmartVM API by APEX’s other clients, analyze data uploaded and use such data to create and provide analysis, reports,

derivative statistics and other products and services based on the foregoing, provided that no such product or service distributed to third-parties by APEX shall identify you as the source of data used in preparing such product or service. Further, you acknowledge that certain data uploaded through the SmartVM API may be used by APEX for its own purposes and analyzed in derivative works as part of APEX's business where that data is also public information or has been gathered, derived or developed by APEX independent of the services provided hereunder.

- 8.2** If you give feedback about the SmartVM APIs to APEX, you give to APEX, without charge, the right to use, share and commercialize your feedback in any way and for any purpose. You will not give feedback that is subject to or requires a license.
- 8.3** In the event you believe that any SmartVM Validation includes information that is inaccurate, or you have feedback on how such SmartVM Validation could be improved or enhanced, you may send such information to APEX at [enterprisesupport@apexanalytix.com](mailto:enterprisesupport@apexanalytix.com). APEX has no obligation to alter the results of any SmartVM Validation based on such feedback.

**9.0 Indemnification** – You will defend, hold harmless, and indemnify APEX, its affiliates, and our and their respective employees, officers, directors, investors, and any third-party suppliers and licensors from any claim or action brought by a third-party, including all damages, liabilities, costs and expenses, including reasonable attorney's fees, to the extent resulting from, alleged to have resulted from, or in connection with: (a) your breach of your obligations of the Terms; or (b) the violation of any intellectual property right.

#### **10.0 Termination**

- 10.1 Your termination rights** - If you are dissatisfied with any portion of the SmartVM API, or any of these API Terms, your sole and exclusive remedy is to cease using the SmartVM API.
- 10.2 Termination by APEX** – We may immediately terminate or suspend these API Terms, any rights granted herein and/or your license to the SmartVM API, in our sole discretion at any time, for any reason.
- 10.3 Effect of termination** - Upon termination, all license rights granted herein immediately expire and you must cease use of the SmartVM API.

#### **11.0 General Terms**

- 11.1 Law and forum for legal disputes** - These Terms are governed by the laws of North Carolina, without regard to conflict of laws principals. You agree to the exclusive jurisdiction of the courts of North Carolina.
- 11.2 Notice** - All of our rights in these API Terms may be exercised without prior notice or liability to you.
- 11.3 Severability** - If any of these API Terms are held to be invalid, unenforceable or illegal for any reason, the remaining terms shall nevertheless continue in full force.
- 11.4 Support** – Because the SmartVM API is provided “as is” we may not provide support services and any support we provide shall be in our sole discretion and we may stop providing support at any time without notice or liability to you. Further, APEX is not obligated to provide any training or technical assistance for the SmartVM API.
- 11.5 Entire Agreement** – These Terms (including any Additional Terms, policies or agreements incorporated by reference) constitute the entire agreement between you and us regarding the SmartVM API and supersede all prior agreements and understandings, whether oral or written, or whether established by custom, practice, policy or precedent, with respect to the subject matter of these Terms.
- 11.6 Relationship of the parties** – Notwithstanding any provision hereof, for all purposes of the API Terms, you and APEX shall be and act independent parties and not as partners, joint venturers, agents, employees or employer of the other. You shall not have any authority to assume or create any obligation for or on behalf of APEX, express or implied, and you shall not attempt to bind APEX to any contract.
- 11.7 Assignment** – You may not assign or delegate any rights or obligations under these API Terms, including in connection with a change of control. Any purported assignment and delegation shall be ineffective. We may freely assign or delegate all rights and obligations under these API Terms, fully or partially, with or without notice to you.
- 11.8 No Waiver** – Neither party's failure to act with respect to a breach of these API Terms waives either party's right to act with respect to that breach or subsequent similar or other breaches.

**11.9 Survival** – Sections of these API Terms that, by their terms, require performance after the termination or expiration of these API Terms will survive.