

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Version 20160504**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

 - (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice

and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

- (e) **Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) **Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) **Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the

Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

- (l) Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

MASTER SUBSCRIPTION SERVICES AGREEMENT

This Master Subscription Services Agreement contains the terms under which Apptio, Inc. with its primary office at 11100 NE 8th Street, Suite 600, Bellevue, WA 98004 (“**Apptio**”) agrees to grant the entity or company that you represent (“**Subscriber**”) with access to and use of Apptio’s services offerings. The Master Subscription Services Agreement is referred to as the “**Agreement**.” By indicating Subscriber’s acceptance of this Agreement, by executing this Agreement Subscriber agrees to be bound by this Agreement. This Agreement becomes effective on the date on which it is executed by Subscriber and by an Apptio Reseller (the “**Effective Date**”).

The parties agree as follows:

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the applicable party, where “control” means the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares or interests of such entity.

“**Application Domain**” means one domain at Apptio.com combined with a single database as that database may be replicated across a stage, development and production environment.

“**Apptio Reseller**” means an entity that Apptio has authorized as a ‘reseller’ of Apptio’s service offerings.

“**Customer Support Services**” means the customer support services relating to the Subscription Services as described in Apptio’s then-current Customer Support Services Policy, the current version of which is attached hereto as Attachment A.

“**Subscriber Data**” means all of Subscriber’s data, statistics and information, whether or not Confidential Information, entered or uploaded into the Subscription Services by or on behalf of Subscriber or any of its Affiliates. For clarification, Subscriber Data does not include Output.

“**Documentation**” means all Apptio-provided user manuals and on-line help files, in all forms, relating to the Subscription Services.

“**Sales Order**” means an effective sales order provided to Apptio by an Apptio Reseller that describes Subscriber’s order for Services under a Resale Agreement. Each Sales Order becomes effective when executed by Apptio and the Apptio Reseller.

“**Subscription Services**” means the web-based business management offering identified in the Sales Order, as such offerings may be modified, enhanced and/or updated from time to time by Apptio, but which for clarity excludes all Subscriber Data and Output.

“**Output**” means all data, information, and metrics derived from the Subscriber Data that are generated by the Subscription Services in response to calculation and report queries made by Subscriber or an Affiliate, and which does not include the report format or other such frameworks in which the data, information and metrics are displayed.

“**Professional Services**” means any configuration, deployment, guided services, consultation, education or training services provided by Apptio pursuant to a SOW.

“**Services**” means the Subscription Services and Professional Services provided by Apptio pursuant to the applicable Sales Order.

“**Scope Limitations**” means (i) the requirement that the Subscription Services may be used only for Subscriber’s internal business purposes to manage Subscriber’s IT resources, and (ii) any other limitations on Subscriber’s use of the Subscription Services specified in the applicable Sales Order, such as a limitation on maximum spend managed by the Subscription Services.

2. ORDERING – SUBSCRIPTION SERVICES & CUSTOMER SUPPORT

2.1 **Orders from Resellers.** Subscriber will order and purchase Services directly from an Apptio Reseller pursuant to a separate agreement specifying price, minimum subscription period, payment and other commercial terms (a “**Resale Agreement**”). Apptio is not a party to the Resale Agreement, but will provide the purchased Services pursuant to this Agreement. Apptio Resellers are not authorized to make any changes to this Agreement or bind Apptio to any additional or different terms and conditions. The Subscription Services are deemed accepted upon delivery. Delivery of the Subscription Services shall have occurred once the URL to the Application Domain has been provisioned and passwords enabling access thereto have been provided to Subscriber.

2.2 **Sales Orders.** For each Resale Agreement, the Reseller will issue to Apptio a Sales Order, which will contain a list of Subscription Services and/or Statements of Work for the provision by Apptio of Professional Services to Subscriber (a “**SOW**”). Each Sales Order shall be subject to the terms of this Agreement, and become a part of this Agreement by incorporation. In the case of a conflict between the terms set forth herein and those of the Sales Order or SOW, the terms of the Sales Order or SOW will control.

2.3 **Subscription Services & Security.** Subject to the terms and conditions of this Agreement, Apptio grants to Subscriber a limited, worldwide, non-exclusive, non-transferable (except as permitted in Section 12.2) right, without right of sublicense, during the subscription term set forth on the applicable Sales Order to use the Subscription Services. Subscriber’s right to use the Subscription Services is limited by and subject to the Scope Limitations. Apptio reserves to itself all rights to the Subscription Services and Documentation not expressly granted to Subscriber in accordance with this Agreement.

(a) **Use of the Documentation.** Subject to the terms and conditions of this Agreement, Apptio grants to Subscriber a limited, worldwide, non-exclusive, non-transferable (except as permitted in Section 12.2) license, without right of sublicense, during the term of this Agreement to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with use of the Subscription Services in accordance with this Agreement.

(b) **Use Restrictions.** Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Subscriber will not, and will not permit or authorize third parties to: (3. rent, lease, or otherwise permit third parties to use the Subscription Services or Documentation; (4. use the Subscription Services to provide services to third parties (e.g., as a service bureau); (5. circumvent or disable any security or other technological features or measures of the Subscription Services; (6. decompile, disassemble or reverse engineer the Subscription Services, any component thereof, or the logic, process or underlying methodology of the Subscription Services or related process trade secrets provided by Apptio; (7. provide access to the Subscription Services to any third party for purposes of assessing features, functionality, or performance of the Subscription Services either in comparison to other solutions or otherwise. Subscriber will use the Subscription Services and Documentation in compliance with all applicable laws and regulations.

(c) **Subscriber’s Protection against Unauthorized Use.** Subscriber will use reasonable efforts to prevent any unauthorized use of the Subscription Services and Documentation, and will immediately notify Apptio in writing of any unauthorized use that comes to Subscriber’s attention. If there is unauthorized use by anyone who obtained access to the Subscription Services directly or indirectly through Subscriber, Subscriber will take all steps reasonably necessary to terminate the unauthorized use. Subscriber will cooperate and assist with any actions taken by Apptio to prevent or terminate unauthorized use of the Subscription Services or Documentation.

(d) **Apptio Data Security.** Apptio will in all cases use commercially reasonable efforts to establish and maintain safeguards for the Subscription Services that are designed to protect against the accidental or unauthorized access, use, alteration or disclosure of data properly loaded to the Subscription Services, which in all cases will be at least as protective as Apptio uses to protect its own data. Such efforts will be Apptio’s sole obligation with respect to the security and protection of Subscriber’s data as it is processed or stored on a computer and/or computer network owned or controlled by Apptio in connection with the Subscription Services.

2.4 **Customer Support Services.** So long as Subscriber is current with its payment of the fees specified in the applicable Sales Order, Apptio will provide the Customer Support Services during the term of this Agreement for the

Subscription Services.

3. PROFESSIONAL SERVICES

3.1 **Performance of Professional Services.** Apptio will provide the Professional Services as set forth in any SOW(s).

3.2 **Apptio's Personnel.** Apptio will (if requested by Subscriber at any time) furnish information concerning the qualifications of any individual who Apptio intends to assign to perform any Professional Services. Subscriber may review such information in order to assess their qualifications. Apptio will make commercially reasonable efforts to assign its personnel to the Professional Services in a manner that minimizes disruptions caused by discontinuity of service. Apptio personnel will not hold themselves out as employees or agents of Subscriber, nor seek to be treated as employees of Subscriber for any purpose, including claims of entitlement to fringe benefits provided by Subscriber, or for disability income, social security taxes or benefits, Federal unemployment compensation taxes, State unemployment insurance benefits or Federal income tax withholding at source. Apptio will file all applicable tax returns for its personnel assigned hereunder, and make all required payments and deposits of taxes, in a manner consistent with its status as an independent contractor of services.

3.3 **Changes to Services.** Any change in the Professional Services to be provided under any SOW must be agreed to in writing by Subscriber, Apptio and, if applicable, the Apptio Reseller. Either Subscriber or Apptio may propose changes in the Professional Services to be performed under a SOW. If any agreed-upon change in the Professional Services causes an increase in the time required for the performance of any Professional Services or in Apptio's fees to perform any Professional Services, then the schedules for performance of the Professional Services and the compensation payable to Apptio or the Apptio Reseller will be adjusted.

4. PROPRIETARY RIGHTS

4.1 **Subscriber Data.** As between Apptio and Subscriber, Subscriber shall own all intellectual property rights in or to all Subscriber Data and Output, and nothing contained in this Agreement shall be construed to convey any intellectual property rights in or to the Subscriber Data and Output to Apptio. Subscriber represents and warrants to Apptio that it owns any and all rights necessary for the parties to use the Subscriber Data and resulting Output as contemplated hereunder. Notwithstanding the foregoing, Subscriber grants to Apptio the limited rights to use, compile, process, and store Subscriber Data and Output to the extent necessary to provide Services to Subscriber pursuant to the provisions of this Agreement, and such information may also be used to compile industry benchmarks that may be shared with third parties to the extent the shared benchmarks (i) may not reasonably be used to identify Subscriber as the source of data; and (ii) are aggregate numbers comprised of data from third party sources.

4.2 **Apptio Services.** Subscriber acknowledges that (as between Subscriber and Apptio) Apptio shall be deemed to own all of the intellectual property rights in the Services and any related process or methodology provided or used by Apptio hereunder, and any modification, improvement or enhancement thereto, and nothing contained in this Agreement shall be construed to convey to Subscriber ownership of any intellectual property rights in or to the Services or related methodologies or processes, other than the limited rights expressly provided in Section 2.3.

4.3 **Feedback.** Either party may provide feedback to the other about the other party's Confidential Information and/or products and services. All such feedback is entirely voluntarily. Except as otherwise provided in this Agreement, or a separate written agreement between the parties, this Agreement does not limit the party receiving the feedback from otherwise using or exploiting the feedback provided to it.

5. TERM AND TERMINATION

5.1 **Master Agreement.** The term of this Master Subscription Services Agreement shall commence as of the Effective Date designated above, and shall continue in effect until the later of the third anniversary of the Effective Date, or the date upon which there are no longer any then-effective Sales Orders. For the avoidance of doubt, the

termination of this Master Subscription Services Agreement shall also result in the immediate termination of any then-outstanding Sales Orders and the Subscription Services thereunder.

5.2 Termination for Cause. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

5.3 Subscription Terms, Renewals, and SOWs. The subscription term(s) to any Subscription Services will commence and expire on the dates, and renew according to the process, set forth in the applicable Sales Order. If the Sales Order does not otherwise expressly provide a renewal process, the subscription will automatically renew for successive periods of one (1) year unless either party provides written notice of termination at least 30 days prior to the end of the then-current term. Each SOW will be effective until the completion of the work thereunder, or as may be otherwise provided in the SOW or applicable Sales Order.

5.4 Orderly Transfer & Post-Termination Obligations. Upon the expiration or termination of this Agreement for any reason whatsoever, Apptio will provide a reasonable amount of information, cooperation and assistance to Subscriber if and as Subscriber may reasonably request such assistance at Apptio's then-current list rates. Upon written request, Apptio will return Subscriber Data (in its then-current condition) at no additional fee. If not so requested by Subscriber within five (5) days of the effective date of termination, Apptio may destroy Subscriber Data. Notwithstanding the foregoing, Apptio may retain that portion of the Subscriber Data relevant to the benchmarking rights set forth in Section 4.1; provided, that Apptio's use rights of such data post termination will be limited to only those benchmarking rights set forth in Section 4.1. If this Agreement is terminated for any reason any and all fee payment liabilities accrued prior to the effective date of the termination will survive. If this Agreement is terminated by Apptio because of an uncured material breach by Subscriber, Subscriber will pay to the Apptio Reseller that is a party to the affected Sales Orders any subscription fees remaining to be paid by Subscriber for the balance of any fixed term, multi-year subscription; the purpose of which is to prevent the avoidance of future but committed payment amounts for a fixed term subscription by Subscriber's intentional breach.

6. FEES, PAYMENT AND TAXES

6.1 Fees and Payment Terms. Subscriber will pay Apptio Reseller the fees and any other amounts owing under each Sales Order, plus any applicable sales, use, excise, or other taxes, as specified in the applicable Sales Order, or SOW, on and subject to the terms of the Sales Order. Fees paid or payable for Software Services are nonrefundable except as expressly provided herein.

6.2 Taxes. Other than net income and gross receipt taxes imposed on Apptio or the applicable Apptio Reseller, Subscriber will bear all taxes, duties, and other governmental charges (collectively, "taxes") resulting from this Agreement. Notwithstanding anything in this Agreement to the contrary, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Apptio shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 "State and Local Taxes" (Apr 1984) and FAR 52.229-3 "Federal, State and Local Taxes" (Feb 2013).

7. REPRESENTATIONS AND WARRANTIES

7.1 Authority. Subscriber represents and warrants that: (a) this Agreement has been duly executed and delivered by Subscriber and constitutes a valid and binding agreement enforceable against Subscriber in accordance with its terms; and (b) no authorization or approval from any third party is required in connection Subscriber's execution, delivery, or performance of this Agreement.

7.2 **Subscription Services Assurance.** Apptio represents and warrants that at all times during the term of a subscription to a Subscription Service that the Subscription Services on such Sales Order as operating in your production environment will materially conform to the Documentation. If Apptio receives notice and a description of a material non-conformity in the Subscription Services, then Apptio will endeavor to correct such non conformity at no additional charge. If Apptio is unable or unwilling to correct the identified non-conformity, then Subscriber may terminate this Agreement, the Sales Oder (in whole or in part) upon notice to Apptio, without financial liability or obligation to Apptio under this Agreement other than payment for the Services for the period prior to such termination. Upon any such termination, Reseller will promptly provide a refund to Subscriber of subscription amounts prepaid for the period following such termination date, and for any professional services fees pre-paid for such services that were not performed.

7.3 **Standards of Professional Services.** Apptio represents and warrants that the Professional Services will be provided in a workmanlike and professional manner per standards generally accepted in Apptio's industry. Subscriber may terminate the applicable SOW (in whole or in part) in conformity with Section 5.2 if Subscriber provides written notice detailing the defect either during performance or within 90 days of completion of the nonconforming work. Any efforts to cure the material defect during the cure period detailed in Section 5.2 will be performed at no additional cost to Subscriber.

7.4 **No Virus or other Destructive Elements.** Apptio represents and warrants that prior to delivery to Subscriber, Apptio will test all materials using a reputable, commercially available anti-virus software program towards ensuring that the Subscription Services do not and will not contain any viruses, disabling code, or similar programs or mechanisms that by their design materially disrupt, modify, delete, harm or otherwise materially impede the operation of Subscription Services ("Destructive Elements"). If the code Apptio provides to Subscriber contains any Destructive Elements, Apptio agrees to use commercially reasonable efforts to immediately eliminate all Destructive Elements.

7.5 **Compliance with Laws.** Apptio represents and warrants that it will not at any time during the Term fail to comply with applicable domestic, foreign and local laws and regulations and, or to obtain applicable permits and licenses in connection with its obligations under this Agreement, in a manner that materially interferes with Subscribers enjoyment and use of the Services. Subscriber hereby represents and warrants that it will not at any time during the Term fail to comply with applicable domestic, foreign and local laws and regulations and, or to obtain applicable permits and licenses in connection with its obligations under this Agreement. For clarity, any technical breach of this provision by Subscriber that is directly caused by a breach by Apptio under this Section 7.5 will not be deemed a breach by Subscriber.

7.6 **Disclaimer.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT OR ESTABLISHED BY APPLICABLE LAW AS RIGHTS THAT CANNOT BE WAIVED OR LIMITED BY CONTRACT, EACH PARTY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

8. CONFIDENTIAL INFORMATION

8.1 **Confidential Information.** "Confidential Information" means any information disclosed by either party to the other party, directly or indirectly, in writing, orally, or by inspection, which is designated as "Confidential," "Proprietary," or some similar designation. Information communicated orally will be considered Confidential Information if the information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information will not, however, include any information that (i) was publicly known and made generally available through widespread distribution (more than one source) in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; or any wrongful action; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party, as shown by the receiving party's files and records; (iv) is obtained by the receiving party from a third party without a breach of the third party's obligations of confidentiality; or (v) is independently developed by

the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. The features and functionality of the Subscription Services, and the Apptio processes and methodologies concerning the management of the cost, value and utilization of resources, and for the deployment of its solution, are in large part confidential information. Apptio will mark all such elements as "Confidential" or "Proprietary" where practicable, but otherwise such elements will be confidential if given the nature of the material and the circumstances of disclosure a reasonable person would determine such material to be confidential. Notwithstanding anything in this Agreement to the contrary, the Customer may release such Confidential Information as required by law or regulation.

8.2 Mutual Confidentiality. Each party agrees to use the other party's Confidential Information solely for the purposes contemplated by this Agreement, and to refrain from sharing the other party's Confidential Information with any third party, unless: (a) any disclosure is necessary or appropriate in connection with the receiving party's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the parties; (b) any disclosure is required by applicable law (e.g., pursuant to applicable securities laws or legal process); provided, that the receiving party uses reasonable efforts to give the disclosing party reasonable advance notice thereof (i.e., so as to afford the disclosing party an opportunity to intervene and seek an order or other appropriate relief for the protection of its confidential information from any unauthorized use or disclosure); or (c) any disclosure is made with the consent of the party whose information is to be shared. Either Party is free to use for any purpose the residuals resulting from any engagement under this Agreement if such use does not result in the sharing of the other Party's Confidential Information in violation of this Section 8. "Residuals" means information retained in the unaided memory of an individual in a manner that was incidental to work performed hereunder and not intentionally memorized through use of notes or other aids. For clarity, this residuals provision does not grant any license under the disclosing Party's copyrights or patents. Apptio does not waive any applicable exceptions to the Freedom of Information Act, 5 U.S.C. §552, including confidentiality, trade secret and privacy related exceptions. Notwithstanding anything in this Agreement to the contrary, the Customer may release such Confidential Information as required by law or regulation.

9. INDEMNITY

9.1 Infringement Indemnity. Apptio will defend and indemnify Subscriber, and, if applicable, its Affiliates (collectively, the "Indemnitees") from and against any and all claims, proceedings, or suits brought by a third party against an Indemnitee (a "Claim") that Subscriber's use of the Subscription Services in accordance with this Agreement infringes, misappropriates or violates such third party's intellectual property rights, and from and against any costs, losses and liabilities arising from such Claims (collectively "Damages"). Apptio's obligations under this Section shall not extend to Claims where the actual or allegedly offending Apptio Services would not so infringe, misappropriate or violate such third party's intellectual property or other rights if other, non-offending data, reports, statistics or other information were used in place of the Subscriber Data or resulting Output.

9.2 General Indemnity. Apptio will defend and indemnify the Indemnitees from and against any and all third-party Claims (and resulting Damages):

- (a) made by any subcontractor or independent contractor of Apptio or by any personnel of Apptio, in each case in connection with or arising from such person's or entity's role as subcontractor, contractor or personnel of Apptio, including (as an example) alleging that any Indemnitee should be deemed the "employer" or "joint employer" of any of Apptio's personnel;
- (b) resulting from any grossly negligent act or omission by Apptio or its personnel that results in personal injury or death, or damage to tangible personal property.

9.3 Indemnification Procedures. If an Indemnitee seeks indemnification under this Agreement, the Indemnitee will: (i) give prompt notice to Apptio concerning the existence of the indemnifiable event; (ii) grant authority to Apptio to defend or settle any related action or claim; and, (iii) provide such information, cooperation and assistance to Apptio as may be reasonably necessary for Apptio to defend or settle the claim or action. An Indemnitee's failure to give prompt notice shall not constitute a waiver of the Indemnitee's right to indemnification and shall affect

Apptio's indemnification obligations only to the extent that Apptio's rights are materially prejudiced by such failure or delay. Notwithstanding anything to the contrary set forth herein, (i) an Indemnitee may participate, at its own expense, in any defense and settlement directly or through counsel of its choice, and (ii) Apptio will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnitee or increase the obligations assumed by the Indemnitee under this Agreement, without the prior written consent of the Indemnitee.

10. LIMITATION OF LIABILITY

10.1 **Types of Damages.** EXCEPT TO THE EXTENT, IF ANY, PROHIBITED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR SUCH PARTY'S LOST PROFITS OR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH PARTY HAS BEEN INFORMED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION OF TYPES OF DAMAGES SET FORTH IN THIS SECTION 10.1 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN.

10.2 **Damage Cap.** EXCEPT TO THE EXTENT, IF ANY, PROHIBITED BY APPLICABLE LAW, EACH PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY SUBSCRIBER TO APPTIO DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 10.2 SHALL NOT APPLY TO (i) THE PAYMENT OBLIGATIONS FOR SERVICES, OR (ii) ARISING FROM EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN. APPTIO HAS NO LIABILITY FOR ANY REFUND OR CREDIT THAT, IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, IS TO BE PAID OR PROVIDED BY AN APPTIO RESELLER.

10.3 **Independent Allocations of Risk.** EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY APPTIO TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 10 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

10.4 **Claim Time Limit.** Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

11. INSURANCE REQUIREMENTS

11.1 **Required Coverage.** During the term of this Agreement and for so long as any service obligation on any Sales Order has not yet expired or been terminated, Apptio will maintain, at its own expense, insurance coverage with limits of no less than those set forth below, and with insurers with a minimum A.M. Best Financial Strength rating of "A- (Excellent)" and Financial Size rating of "X", or equivalent ratings.

- (a) Professional Liability Insurance ("**Errors and Omissions**") in the minimum amount of \$5,000,000 per claim, covering losses from any act, errors, omissions, negligence, breach of duty and/or misrepresentations related to Apptio's obligations under this Agreement.
- (b) Commercial General Liability including broad form contractual liability and personal injury endorsement, providing coverage against liability for bodily injury, death, and property damages in the minimum amount of \$1,000,000 per occurrence and no less than \$2,000,000 annual aggregate.
- (c) Automobile Liability in the minimum amount of \$1,000,000 Combined Single Limit ("**CSL**") per occurrence for bodily injury and property damage.
- (d) Workers Compensation insurance covering Apptio's employees pursuant to Applicable Law and at the statutory limits required for each applicable state, and Employers Liability coverage in the minimum amount

of \$1,000,000 each accident/each employee.

(e) Umbrella/Excess Liability providing excess liability coverage in the minimum amount of \$3,000,000 per occurrence, to supplement the primary coverage limits for Commercial General Liability.

11.2 **No Limitation.** The requirements set forth above as to types, limits and approval of insurance coverage to be maintained by Apptio will not in any manner limit the liabilities and obligations assumed by Apptio under this Agreement.

12. General

12.1 **Independent Contractor.** Apptio will provide all Services as an independent contractor. Neither this Agreement nor Apptio's provision of Services shall create an association, partnership, joint venture, or relationship of principal and agent, master and servant, or employer and employee, between Subscriber and Apptio; and neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party.

12.2 **Assignability.** Neither party may assign its right, duties, and obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that either party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law).

12.3 **Subcontractors.** Apptio may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Apptio remains responsible for all of its obligations under this Agreement.

12.4 **Notices.** Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth in the introductory paragraph of this Agreement and with the appropriate postage affixed. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 12.4. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

12.5 **Governing Law & Jurisdiction.** The federal laws of the United States shall govern this Agreement without regard to its conflict of laws principles. The Parties expressly disclaim the applicability of, and waive any rights based upon, the Uniform Computer Information Transactions Act, the United Nations Convention on Contracts for the International Sale of Goods and the Convention on the Use of Electronic Communications in International Contracts.

12.6 **Waiver.** No course of dealing, failure by either Party to require the strict performance of any obligation assumed by the other hereunder, or failure by either Party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under this Agreement. No provision of this Agreement shall be deemed to have been waived by any act or knowledge of either Party, but only by a written instrument signed by a duly authorized representative of the Party to be bound thereby. Waiver by either Party of any default shall not constitute a waiver of any other or subsequent default.

12.7 **Force Majeure.** Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

12.8 **Severability.** If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the Parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

12.9 **US Government Rights.** All Apptio software made available as part of the Subscription Services is

commercial software, and all Services are commercial items. 'Commercial computer software' has the meaning set forth in the Federal Acquisition Regulation ("FAR") 2.101 for civilian agency purposes and the Department of Defense ("DOD") FAR Supplement ("DFARS") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the services are acquired by or on behalf of a civilian agency, Apptio provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. Only if this is a DOD prime contract or DOD subcontract, the government acquires additional rights in technical data as set forth in DFARS 252.227-7105. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software or technical data.

12.10 Survival. The provisions of this Agreement that, by their nature, must survive the completion, rescission, termination or expiration of this Agreement in order to achieve the fundamental purposes of this Agreement (including any licenses granted to Subscriber under this Agreement), shall so survive and continue to bind the Parties. Without limiting the generality of the foregoing, the Parties specifically acknowledge that the following provisions shall survive: Sections 1 (Definitions), 4 (Proprietary Rights), 5 (Term and Termination), 6 (Fees Payment & Taxes), 8 (Confidential Information), 10 (Limitations of Liability), 12 (General), and 13 (Complete Understanding).

12.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

13. COMPLETE UNDERSTANDING This Agreement, the underlying GSA Schedule Contract, the Schedule Pricelist and all applicable Sales Orders, is the final and complete expression of the agreement between these parties regarding the Services. This Agreement shall not take precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the Ordering Activity's Sales Order. No employee, agent, or other representative of Apptio or any Apptio Reseller has any authority to bind Apptio with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. Apptio will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Subscriber in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Apptio specifically agrees to such provision in writing and signed by an authorized agent of Apptio.

ATTACHMENT A
Customer Support Policy

Apptio Customer Support is dedicated to providing customers with responsive, high-quality assistance to your inquiries regarding your use of the Apptio Subscription Services in an effective manner. Our support processes and tools are designed to meet the requirements of enterprise level computing environments, and our goal is to optimize each customer's Subscription Services for reliability and performance by providing effective assistance when and if incidents occur.

Services That Customers Can Expect from Customer Support

- Provide initial and high level suggestions regarding the appropriate usage, features, or solution configurations for the particular type of reporting, analysis or functionality that customers may request.
- Answer questions concerning usage issues related to specific features, options, and configurations.
- Isolate, document, and find circumventions or solutions for reported software defects.
- Work with Apptio Operations, Product, Software Development, and QA staff to submit Change Requests, Enhancement Requests, and provide defect fixes for the Apptio Subscription Services as necessary.
- Address customer concerns with online or printed documentation, providing additional examples or explanation for concepts requiring clarification.

Customer Support will monitor whether the complexity and volume of Usage issues may indicate a need for dedicated assistance from Apptio's Customer Success team in the form of Training, Advantage Support Services, or Professional Services.

Contacting Customer Support

Support Hours

Customer Support business hours are weekdays from 6:00am to 6:00pm, US Pacific Time (excluding US public holidays). Severity 1 issue support is provided 24/7 via our support hotline.

Contacting Customer Support

We encourage all customers to contact Apptio via our Customer Support email alias: support@apptio.com. Each email received will automatically create a new issue case, assign it a unique number in Apptio's incident management system, and immediately notify Apptio's Customer Support team. You should receive a confirmation message via email with the case number if you have already registered with Customer Support. The targeted response time will be based on the issue severity (see Severity Levels table below).

For critical severity issues, Customer Support is available 24/7 via telephone at +1-877-327-7846 (+1-877-3APPTIO). You will be prompted to leave a voicemail with customer contact information and a description of the issue, and a support analyst will contact you to troubleshoot.

Customer contacts that will be submitting cases should register for a support account, in order to associate their email with the correct account. This will expedite the routing of the issue to the correct Support Analyst and Customer Success Manager ("CSM"). Send an email to support@apptio.com to register for your support account.

Severity Levels

The table below outlines the different severity levels of Issues. The support analyst will work with the customer contact to determine the severity level based on guidelines listed below.

Severity Level	Description
1 (Critical)	Emergency Issue Full or partial system outage, significant performance degradation, or a condition caused by the Apptio software that creates data integrity issues making the product unusable or unavailable for all users in production.
2 (High)	Significant Business Impact A condition caused by the Apptio software where major functionality is impacted or significant performance degradation is experienced. Issue is persistent and affects many users and/or major functionality.
3 (Medium)	Minor feature / function issue A component of Apptio is not performing as expected or documented. System performance issue or bug.
4 (Low)	Minor problem / enhancement request Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation or configuration; bug; enhancement request.

Response Times

The table below outlines the recommended method of contact for each severity level, and the associated targeted response time. Response times depend on the severity level of the issue and Apptio will use commercially reasonable efforts to meet the target resolution time.

Severity Level	Contact Method	Initial Response Time	Target Resolution Time	Solution Definition (one or more of the following)
1 (Critical)	Email then Phone (if needed)	1 hour for all incidents reported via phone. 1 business hour if submitted via email.	On-going assistance until solution is received	<ul style="list-style-type: none"> Issue is resolved Satisfactory workaround is provided Product patch is provided Fix incorporated into future release
2 (High)	Email then Phone (if needed)	4 business hours	Within 5 business days	<ul style="list-style-type: none"> Issue is resolved Satisfactory workaround is provided Product patch is provided Fix incorporated into future release
3 (Medium)	Email	1 business day	Within 10 business days	<ul style="list-style-type: none"> Issue is resolved Satisfactory workaround is provided Fix incorporated into future release Answer to question is provided
4 (Low)	E-Mail	2 business days	Within 10 business days	<ul style="list-style-type: none"> Answer to question is provided Enhancement request logged

Issue Status

As part of the communication process, Apptio Customer Support will use a standard set of status definitions to indicate support case status:

Status	Definition
New	The issue has been logged and is awaiting initial review by an Apptio Customer Support analyst.

Support In Progress	There is an action item pending for Apptio Customer Support.
Pending Customer Action	There is an action item pending for the customer.
Pending Engineering Response	There is an action item pending for Apptio Engineering.
Pending Operations Response	There is an action item pending for Apptio Operations.
On Hold	This issue has been put on hold per request of the customer.
Closed Pending Confirmation	This issue has been resolved pending confirmation from the customer.
Closed	This issue has been closed for one of the following reasons: <ul style="list-style-type: none"> • Issue Resolved • Answer Provided • Solution Bug • Solution Enhancement • Documentation Bug • Documentation Enhancement • Cannot Reproduce Issue • No Customer Response

A problem will be closed out upon mutual agreement of the support analyst responsible for the problem and the customer.

In cases where the support analyst is awaiting further information from the customer and does not receive a response for a period of 5 days, the support analyst will make two attempts 24 hours apart to contact the customer. If no contact is established, the support analyst will close the issue with a final email to customer letting them know what has been done.

Any closed issue can and will be re-opened within 45 days of closure if the customer feels that the issue was closed prematurely or customer believes that the problem still exists and the issue should not have been closed.

Anything past 45 days will be treated as a new issue and reference the old issue number in the notes.

How to escalate Customer Support cases

If the normal support process does not produce the desired results, or if the problem has changed in priority, the problem can be escalated as follows:

- The customer should first contact the support analyst working on the problem and request that the priority of the problem be changed and be escalated.
- If additional escalation is required, the customer can contact their CSM.
- If continued escalation is required, the customer may call the Apptio Support number and request to speak to the Manager of Customer Support.

Required Information for Logging a Support Issue

When submitting a new issue, please provide the following information:

In Subject of email

- Brief description of the problem

In Body of Email

- Company name
- Contact name
- Phone number (including extension) and Email address
- Alternate Contact Phone Number and Email address (if necessary)
- Level of severity (see above for definitions)
- Web browser provider and version number
- Detailed description of the problem, including any steps required to reproduce the problem, and any screenshots if available.

- Copy/paste the URL of the Apptio screen(s) containing the error if available
- Time Period
- User ID that experienced issue
- Screenshots if appropriate or helpful

In any subsequent communication with customer support about an active or non-active issue, please include the ref number from your confirmation email in the body of the email. (I.e. ref:00D47WEd.5006FhvsD:ref)

For critical severity issues, Customer Support is available 24/7 via telephone at +1-877-327-7846 (+1-877-3APPTIO). You will be prompted to leave a voicemail with customer contact information and a description of the issue, and a support analyst will contact you to troubleshoot.