



SUBSCRIPTION SERVICES AGREEMENT

THIS SUBSCRIPTION SERVICES AGREEMENT AND THE EXHIBITS ATTACHED HERETO (COLLECTIVELY, THE “**AGREEMENT**”) IS A LEGAL CONTRACT BETWEEN YOU (“**YOU**” OR “**CUSTOMER**,” EITHER AN INDIVIDUAL OR THE ENTITY ON WHOSE BEHALF YOU ARE EXECUTING THIS AGREEMENT) AND **APTO, INC.** (“**WE**”, “**US**”, “**APTO**”) WHICH GOVERNS YOUR PURCHASE AND USE OF THE SUBSCRIPTION SERVICES. YOU AND US ARE ALSO COLLECTIVELY REFERRED TO AS THE PARTIES. BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. This Agreement is effective as of the date of Your acceptance of this Agreement.

1. DEFINITIONS.

1.1. “Affiliate” is an entity that controls, is controlled by or shares common control with APTO or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

1.2. “Aggregated Data” means any non-personally identifiable, technical, statistical or analytical data gathered or generated directly by use of the Subscription Services, and which APTO collects, gathers and aggregates periodically as part of its services. APTO (its affiliates, licensors, partners and designated agents) may use this information to monitor and improve its products, services or to provide customized services or technologies to their customers. APTO collects and use this information in accordance with its privacy policies and in accordance with applicable data protection laws. Aggregated Data does not include Customer Data.

1.3. “Authorized End User” means any individual authorized, by virtue of such individual’s relationship to, or permissions from, Customer, to access the Services pursuant to Customer’s rights under this Agreement.

1.4. “Customer” means either you as an individual, or a corporate entity or other business organization to whom APTO provides the Subscription Services for use by itself or by Authorized End Users.

1.5. “Customer Data” means all the data and/or information provided by Authorized End Users and/or Customer during the use of the Subscription Services, including all text, graphics, pictures, photos, profiles, reviews, messages, notes, and/or any other uploaded content, published or displayed on or through the Subscription Services, or transmitted to or shared with other users. Customer Data does not include any Aggregated Data.

1.6. “Order Form” means the document through which Customer orders and purchases APTO Subscription Services under this Agreement. Order Forms hereunder must reference this Agreement and are incorporated by reference upon execution (i.e. signature) of both parties. Access to Subscription Services shall be made only against written Orders Forms expressly accepted by APTO. At minimum, each Order Form shall specify: (a) a description of the Subscription Services covered by the Order Form, including start date of services, term of the subscription, number of User Licenses, etc.; (b) prices, including any applicable discounts, and any other charges and costs; and details such as billing and/or invoice address, and payment information; and/or (c) any additional information relevant to the Services contracted. In the event of any conflict between the terms and conditions of this Agreement and those of any Order Form, the terms and conditions of this Agreement shall control. No pre-printed or boilerplate terms of any purchase order issued by Customer to APTO shall have any binding effect against APTO. APTO may refuse to accept any Order Form, in its sole discretion.

1.7. “Professional Services” means additional and separate service(s) not included in this Agreement, and that are geared towards special requirements of clients, such as configuration, adaptation, development of customized features or functionalities to the Subscription Services, and the like. Professional Services are provided by APTO on a time and materials basis under the terms of a separate agreement.

1.8. “Subscription Services” means the hosted services provided by APTO to Authorized End Users and/or Customers by means of accessing and using the features and functions of the APTO applications, as contemplated in this Agreement.

1.9. “User License” shall mean a license with a unique user identification and password to grant access to a single named user to the Subscription Services, solely for the term such services are contracted.

2. ORDERING AND PURCHASES.

Access to services and products provided by APTO shall be made only against written Order Forms accepted by APTO. This Agreement contemplates the execution by the parties of one or more Order Forms. Order Forms may be entered under this Agreement by and between (a) APTO or an Affiliate of APTO; and (b) the Customer or an Affiliate of Customer. With respect to an Order Form, the terms “APTO” and “Customer” as used in this Agreement will be deemed to refer to the entities that execute that Order Form, the Order Form will be considered a two party agreement between such entities, and APTO will separately invoice the Customer named in the Order Form for the associated subscription fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Order Forms.

3. SUBSCRIPTION SERVICES.

3.1. Access Rights. Subject to the terms of this Agreement, APTO hereby grants to Customer a worldwide, nonexclusive, non-transferable, non-sublicenseable, limited license for Customer and its Authorized End Users to access and use the Subscription Services up to the number of User Licenses acquired by Customer, in accordance with the terms of this Agreement, and solely in connection with Customer’s internal business purposes. Customer acknowledges and agrees that any act or omission of its Authorized End Users in connection with use of, or access to the, Subscription Services, which act or omission would constitute a breach of this Agreement if undertaken by Customer, shall be considered a material breach by Customer hereunder.

3.2. User Licenses. The number of Users Licenses being purchased will be set forth in an Order Form. User Licenses are for designated users and cannot be shared or used by more than one Authorized End User, but may be redesignated to new users, as necessary, provided such re-designation is not used to circumvent the prohibition on sharing User Licenses. Unless otherwise specified in the relevant Order Form, (i) additional User Licenses may be added in minimum increments of 1; (ii) the term of the additional User License shall be coterminous with the expiration of the subscription term in effect at the time the additional User License is added; and (iii) pricing for the additional User Licenses shall be prorated for the remainder of the subscription term in effect at the time such additional User Licenses are added.

3.3. APTO Responsibilities and Rights.

(a) Services. APTO will provide the Subscription Services in a professional manner consistent with general and reasonable industry standards.

(b) Hosting. Customer agrees and understands that APTO has entered into arrangements with one or more third parties for the hosting of APTO’s applications and platform, whereby any such third party will perform the hosting obligations, provided that APTO shall ensure that any such third party shall be contractually bound to provide substantially the same level of protection with respect to Customer Data as is provided by the terms of this Agreement (our “**Third-Party Hosting Provider**”). Customer acknowledges and agrees that the Third-Party Hosting Provider’s service levels, use policies and terms of service will apply to Customer and that Customer is bound by such terms of service and use policies (the “**Third-Party Hosting Terms of Service**”). Our current Third-Party Hosting Provider is identified in **Exhibit A**. The Third-Party Hosting Terms of Service applicable to Customer are also hereby attached as **Exhibit A**.

(c) Customer Data. APTO shall maintain and handle all Customer Data in accordance with privacy and security measures reasonably adequate to preserve its confidentiality and security as required by applicable privacy laws and regulations. Customer hereby grants to APTO a royalty-free, nonexclusive, worldwide, right and license (with the right to sublicense through multiple tiers) to use, copy, store, process, transmit and display Customer Data as necessary to provide the Subscription Services hereunder. APTO agrees that to the extent the Subscription Services stores, processes or transmits Customer Data, neither APTO nor the Subscription Services will, without appropriate prior Customer consent or except to the extent required by applicable law, (1) disclose Customer Data to any third party not authorized herein, or (2) use Customer Data for any purpose other than providing application functionality to users of the Subscription Services. Customer acknowledges and consents that the Subscription Services provided may require Customer Data to be transferred to a country outside of Customer’s country or the country where the Customer Data originated. APTO has no obligation to retain Customer Data following thirty days after complete termination of the Subscription Services. Customer shall have thirty (30) days from the date of termination of their Subscription Services in which to request a copy of their Customer Data, which will be made available to Customer in a .csv format.

(d) Service Levels. Solely if contracted in an applicable Order Form, APTO will provide the Subscription Services in accordance with a service level agreement. The Parties agree that any contracted Service Level Agreement will be attached as **Exhibit B**.

(e) Aggregated Data. Customer acknowledges and agrees that APTO may compile anonymous Aggregated Data. To

the extent necessary, Customer hereby grants APTO a royalty-free, nonexclusive, irrevocable, right and license (with the right to sublicense) to develop anonymous Aggregated Data from the use of the Subscription Services.

(f) **System Notifications.** Customer shall receive reasonable system notifications pertaining the Subscription Services, including planned downtime notices and the like.

3.4. Professional Services. Customer may purchase additional Professional Services pursuant to a separate Professional Services Agreement (with its related Statements of Work) that has been mutually negotiated, agreed and separately executed by the Parties. Customer agrees and understands that absent such separate Professional Services Agreement APTO has no obligation to perform any such services.

3.5. Customer Responsibilities and Restrictions.

(a) **Passwords and Unauthorized Access.** Customer is responsible for maintaining the confidentiality of the passwords assigned to Customer. Customer will immediately notify APTO if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. Customer will be responsible for any and all activities made under Customer's User Licenses, including without limitation any fees incurred under Customer's password-protected account. Customer shall (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Subscription Services, and notify APTO promptly of any such unauthorized access or use, and (ii) comply with all applicable laws in using the Services.

(b) **Restrictions.** Customer and its Authorized End Users shall not (i) modify, copy or create derivative works based on the Subscription Services; (ii) create Internet "links" to or reproduce any content forming part of the Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Subscription Services or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Subscription Services; (iv) interfere with or disrupt the integrity or performance of the Subscription Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Subscription Services; (vi) send or store viruses or malicious code via the Subscription Services; (viii) attempt to gain unauthorized access to the Subscription Services or its related applications, software, systems, platforms or networks; or (ix) use any components provided with the Services separately from the Subscription Services.

(c) **Customer Data.** Customer agrees that itself, or its Authorized End Users, are solely responsible for the Customer Data, and it shall require Authorized End Users not to post, transmit, or share Customer Data on the Subscription Services that they do not have permission to post. Customer agrees and accepts that it is solely responsible at its sole cost and expense for creating backup copies and replacing any Customer Data posted or stored on the Services or provided to APTO. Customer represents and warrants (i) that it has the right to disclose and provide to APTO any data provided through use and access of the Subscription Services, and that no materials of any kind submitted as Customer Data or otherwise posted, transmitted, or shared on or through the Subscription Services will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material; and (ii) that Customer's (and that of its Authorized End Users') use of and access to the Subscription Services complies with all applicable laws, rules and regulations.

4. FEES AND PAYMENT.

4.1. Fees. The fees payable for the Subscription Services will be set forth in the Order Form. The fees will be invoiced in accordance with the relevant Order Form and are due upon receipt of invoice. The per-unit pricing during any automatic renewal term as per section 5.1(c) below will be the same as that during the immediately prior term unless APTO has given Customer written notice of a pricing increase at least sixty (60) days before the end of that prior License Term, in which case the pricing increase will be effective upon renewal and thereafter. Unless otherwise agreed in an Order Form, any such pricing increase will not exceed 7% of the pricing for the applicable purchased Subscription Service in the immediately prior License Term (i.e. subscription term).

4.2. Taxes. Customer will pay or reimburse APTO or, when required by law, the appropriate governmental agency, for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on APTO's net income or arising from the employment relationship between APTO and its personnel) imposed in connection with the fees paid for the Subscription Services, which are exclusive of these taxes.

4.3. Suspension of Subscription Services for non-payment. In addition to its other rights and remedies, APTO reserves the right, without liability to the Customer, to suspend any and all access to the Subscription Services if Customer's account becomes more than thirty (30) days past due until all accounts are paid in full. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.

5. TERM AND TERMINATION.

5.1. Term.

(a) **Agreement.** This Agreement commences on the Effective Date and will remain in effect unless terminated pursuant to Section 5.2 below.

(b) **Order Form(s).** Each Order Form will commence on the start date specified in the relevant Order Form and continue for the term of each subscription specified therein (each a “**License Term**”).

(c) **Term of Purchased Subscriptions.** The term of each License Term shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, License Terms will automatically renew for additional periods equal to the expiring License Term (i.e. subscription term) or one (1) year (whichever is shorter), unless either Party gives the other notice of non-renewal at least Sixty (60) days before the end of the relevant License Term.

5.2. Termination.

(a) **Termination for Convenience.** Either party may terminate this Agreement or reduce the number of User Licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least Sixty (60) days prior to the date of the invoice for the following term.

(b) **Termination for Cause.** Either party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party, if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

(c) **Suspension of Services for Cause.** In addition to its other rights and remedies, APTO reserves the right, without liability to Customer, to immediately suspend any and all access to the Services if Customer commits a material breach of this Agreement (including a breach of Section 3.5) or any relevant Order Form until such material breach is cured. If such material breach is (i) unable to be cured, or (ii) is not cured within ten (10) business days from the suspension, then APTO may immediately terminate the Agreement and/or the affected Order Form.

5.3 Effects of Termination. Upon termination of this Agreement, all rights and licenses granted herein will terminate and Customer will make no further use of the Subscription Services. No termination will relieve the Customer of the obligation to pay any fees accrued or payable to APTO. Upon written request by Customer made within thirty (30) days after the effective date of termination, APTO will make available to Customer a file containing the Customer Data, as per Section 3.3.(c). After such thirty (30) day period, APTO shall have no obligation to maintain or provide any Customer Data and will thereafter delete Customer Data. Upon termination, each Party shall delete any of the other Party’s Confidential Information still in their possession (with the exception of Customer Data as set forth in the preceding paragraph) from computer storage or any other media including, but not limited to, online and off-line libraries; and each Party shall return to the other Party or, at the other Party’s option, destroy, all physical copies of any the other Party’s Confidential Information.

5.4 Survival. The provisions of Sections 1, 3.5 (b), 3.5 (c), 5.3, 5.4, 6, 7, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

6. PROPRIETARY RIGHTS.As between APTO and Customer, APTO, its Affiliates and/or licensors retain all right, title and interest to the Subscription Services, the Aggregated Data, and all related software, applications, programming, documentation, templates, questionnaires, methodologies, models, charts, specifications, reports, and any other intellectual property or items used to deliver the Subscription Services or made available to Customer as a result of the Services (“**Our Technology**”). The Subscription Services and Our related Technology are protected by applicable intellectual property laws and rights, including rights deriving from copyright, trade secret, patents, trademarks and related industrial property. Customer’s access and use of the Subscription Services, Our Technology and any related materials shall be governed by the terms of this Agreement. There are no licenses granted by implication in this Agreement and APTO reserves and retains any rights not expressly granted to Customer. As between APTO and Customer, Customer owns all rights, title and interest in and to Customer Data. In the event Customer (or its Authorized End Users) provides APTO with any suggestions, enhancement requests, recommendations or other feedback relating to the Subscription Services or Technology (“**Feedback**”), Customer hereby grants APTO a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate such Feedback into any APTO products or services, provided it does not include any of Customer’s Confidential Information.

7. CONFIDENTIALITY.

7.1. Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information includes Customer Data. APTO Confidential Information includes the Subscription Services, Our Technology and Aggregated Data. The Confidential Information of each party includes the terms

and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this Section 7.2.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. DISCLAIMERS AND LIMITS ON LIABILITY.

8.1. Disclaimer. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, APTO, ITS AFFILIATES AND LICENSORS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES OR USE THEREOF. APTO, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

8.2. Disclaimer of Damages. EXCEPT FOR A BREACH OF SECTION 3.5 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 9, NEITHER PARTY OR ITS AFFILIATES ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE SERVICES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF, DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF ANY NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

8.3. Limits on Liability. EXCEPT FOR A BREACH OF SECTION 3.5 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 9, NEITHER PARTY OR ITS AFFILIATES SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEEDING THE LESSER OF FIVE HUNDRED THOUSAND DOLLARS (USD \$500,000.00) OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER PURSUANT TO THE ORDER FORM(S) GIVING RISE TO LIABILITY.

9. INFRINGEMENT CLAIMS

9.1 Indemnification by APTO. If a third party asserts a claim against Customer asserting that Customer's use of the Subscription Services in accordance with this Agreement violates that third-party's patent issued in the United States of America as of the Effective Date of this Agreement, misappropriates its trade secret or infringes its copyright rights ("**Infringement Claim**"), then APTO will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded by a court with jurisdiction over the Parties against Customer based on infringement by the Subscription Services. If APTO believes the Subscription Services may violate a right, then APTO will, at its expense: (a) modify the Subscription Services, or (b) procure the right to continue using the Subscription Services, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Subscription Services and issue a pro-rata refund for the unexpired pre-paid portion of such Services.

9.2 Indemnification by Customer. Subject to the terms of this Agreement, if a third party asserts a claim against APTO asserting that the Customer Data or Customer's use of the Subscription Services violates (i) Section 10 of this Agreement; (ii)

that third-party's patent, trade secret, copyright and/or any other intellectual property rights, or (iii) otherwise harms the third party ("Claim"), Customer will, at its own expense: (a) defend or settle the Claim, subject to Section 9.3 below; and (b) indemnify APTO for any costs and expenses incurred, including any damages finally awarded against APTO based on the Claim.

9.3 Exclusions. Neither party's obligations under this Section will apply if: (a) the indemnifying party's legal department does not receive prompt, detailed written notice of the Infringement Claim/Claim from the party being indemnified, (b) the indemnifying party is not able to retain sole control of the defense of the Infringement Claim/Claim and all negotiations for its settlement or compromise, (c) the indemnifying party does not receive all reasonable assistance from the party being indemnified. Neither party will bind the indemnified party to a monetary obligation in a settlement or compromise, or make an admission on behalf of the indemnified party, without obtaining that party's prior consent.

9.4 Exclusive Remedy. This section contains each party's exclusive remedies and the indemnifying party's sole liability for Infringement Claims/Claims, respectively.

10. EXPORT CONTROLS. Customer shall comply with all export laws and restrictions and regulations of the Department of Commerce relating to exports (including "deemed" exports and "deemed" re-exports as defined by the Export Administration Regulations) and re-exports ("Export Laws"), the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States of America or foreign agency or authority, and Customer shall not export, import, re-export or transfer, directly or indirectly, including via remote access, any part of the Subscription Services or any other APTO information or Technology, or allow the export or re-export of the Subscription Services, in violation of any such laws and regulations, or without any written governmental authorization required under applicable laws. By accessing or using the Subscription Services, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country.

11. GENERAL.

11.1. GOVERNING LAW. This Agreement is governed by the substantive laws in force in the State of Colorado, without regard to conflicts of law principles thereof or to the United Nations Convention on the International Sale of Goods. For purposes of all claims brought under this Agreement, each of the Parties hereby submits to the non-exclusive jurisdiction of the State and Federal courts in the State of Colorado.

11.2. MISCELLANEOUS. APTO is not liable for its failure to perform any of its obligations under this Agreement during any period in which performance is delayed by Customer or circumstances beyond APTO's reasonable control. The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. This Agreement, including any Exhibits and Order Forms constitutes the entire agreement between Customer and APTO and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written concerning the Subscription Services. Customer agrees and accepts that APTO Third-Party Hosting Provider is a third party beneficiary to this Agreement. There are no other third party beneficiaries under this Agreement. No modification or waiver of any provision hereof will be effective unless made in a writing signed by both APTO and Customer. Customer may not assign or transfer this Agreement or the Subscription Services to a third party, whether by merger or otherwise. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. The failure of APTO to act with respect to a breach of this Agreement by Customer or others does not constitute a waiver and shall not limit APTO's rights with respect to such breach or any subsequent breaches. All notices under this Agreement will be in writing, in English and will be deemed to have been duly given when received, as duly confirmed by return receipt; or if transmitted during normal business hours by facsimile or e-mail when receipt is electronically confirmed. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

EXHIBIT A

I. Apto, Inc. Third-Party Hosting Provider: Salesforce.com ("SFDC").

II. Third Party Hosting Terms of Use:

SFDC Service Terms of Use:

"**AppExchange**" means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.

"**Reseller**" means Apto, Inc.

"**Reseller Application**" means Investment Real Estate Broker.

"**Platform**" means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller's provision of the Reseller Application to You.

"**SFDC Service**" means the online, Web-based application and platform service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.

"**SFDC**" means salesforce.com.

"**Users**" means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service subject to the terms of these SFDC Service Terms of Use as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by Salesforce.com or Reseller at Your request).

"**You**" and "**Your**" means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of these SFDC Service Terms of Use, together with any other terms required by Reseller.

"**Your Data**" means all electronic data or information submitted by You as and to the extent it resides in the Service.

1. **Use of Service.**

(a) Each User subscription to the Reseller Application shall entitle one User to use the Service via the Reseller Application, subject to the terms of these SFDC Service Terms of Use, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service. If You wish to use the SFDC Service or any of its functionalities or services, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any SFDC Service functionality within it that is in excess to the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access and use such functionality, and You agree that Your use of such functionality, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

(b) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.

(c) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform and the SFDC Service.

(d) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i)

license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by these SFDC Service Terms of Use; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.

(e) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of AppExchange applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform, SFDC Service, and/or the Reseller Application, such as by exchanging data with the Platform, the SFDC Service, and/or the Reseller Application, or by offering additional functionality within the user interface of the Platform, the SFDC Service, and/or the Reseller Application through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of these SFDC Service Terms of Use.

3. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in these SFDC Service Terms of Use. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in these SFDC Service Terms of Use.

4. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

5. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.

6. **Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of these SFDC Service Terms of Use by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with these SFDC Service Terms of Use.

7. **Subscriptions Non-Cancelable.** Subscriptions for the Platform and the SFDC Service are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.

8. **Data Storage.** The Platform and SFDC Service includes a certain cumulative amount of storage per User subscription for no additional charge. Contact Your Reseller for additional information. Additional storage may be available for purchase from the Reseller.

9. **No Warranty.** SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH

RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. SALESFORCE.COM MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE RESELLER APPLICATION. SALESFORCE.COM DOES NOT REPRESENT OR WARRANT THAT (A) THE RESELLER APPLICATION WILL BE AVAILABLE, SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH THE SALESFORCE.COM SERVICE OR ANY OTHER APPLICATION, SOFTWARE, HARDWARE, SYSTEM OR DATA, (B) THE RESELLER APPLICATION, THE PLATFORM OR THE SFDC SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY DATA STORED USING THE RESELLER APPLICATION WILL BE ACCURATE, RELIABLE, OR SECURE, (D) ERRORS OR DEFECTS IN THE RESELLER APPLICATION, THE PLATFORM, OR THE SFDC SERVICE WILL BE CORRECTED, OR (E) THE RESELLER APPLICATION OR THE SYSTEMS USED BY RESELLER TO MAKE RESELLER APPLICATION AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE PLATFORM AND THE SFDC SERVICE IS PROVIDED STRICTLY ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALESFORCE.COM DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO RESELLER APPLICATION AND THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

10. No Liability. IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Further Contact. SFDC may contact You regarding new SFDC service features and offerings.

12. Google Programs and Services. Platform or SFDC Service features that interoperate with Google programs and services depend on the continuing availability of applicable Google application programming interfaces ("APIs") and programs for use with the Platform and the SFDC Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms to SFDC, SFDC may cease providing such features without entitling You or Reseller to any refund, credit, or other compensation.

13. Third Party Beneficiary. SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to these SFDC Service Terms of Use.

Exhibit B Service Level Agreement

This Service Level Agreement covers the application through which **APTO, INC.** (“WE”, “US”, “APTO”) provides our Subscription Services (the “Services”).

You agree and understand that our server uptime is as supported by our Third-Party backbone and hosting services provider, Salesforce.

Provided you are current with all payments, during your subscription term (the “License Term”), the Services will be available to you (“Customer”) a Monthly Uptime Percentage of at least 99.5% (the “Service Level Commitment” or “SLA”).

Standard Features of our support services:

- Support via email: support@apto.com.
- Support via phone: (888) 633-6424 x 2. Available during the following hours: 7 AM to 7 PM MST, except for USA federal holidays and holidays in the State of Colorado.
- 48 hour email feedback for all issues.
- Notification of Scheduled Downtime in advance. Scheduled Downtime for regular maintenance occurs twice a month and notifications are usually by email with 24 hours in advance.

“Monthly Uptime Percentage” means the total number of minutes in a month (“Total Minutes”), minus the number of minutes of Unscheduled Downtime in a month, divided by the Total Minutes of that month. For purposes of this SLA, the Total Minutes in a month is the result of all the minutes of a specific month minus the amount of minutes of regular Scheduled Downtime applied during that month (i.e. for the month of January the total amount of minutes is 44,640. If there were 4 hours of Scheduled Downtime, Total Minutes for January are 44,400.).

“Unscheduled Downtime Period” means a period of more than seven consecutive minutes where the application services are unavailable outside of regular Scheduled Downtime. Intermittent Downtime for a period of less than seven minutes will not be counted towards any Downtime Period.

Apto in its sole discretion, may modify this SLA at any time.

Service Credits: If Apto does not meet SLA, the following percentage will be credited to future monthly bills of Customer for Covered Services: 5% of the monthly subscription service value.

In order to receive Service Credits, Customer must notify Apto technical support at support@apto.com within thirty (30) days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

Maximum Service Credit. Notwithstanding the foregoing, the aggregate maximum number of Service Credits to be issued by Apto to Customer for any and all Downtime Periods that occur in a single billing month will not exceed 50% of the amount due by Customer for the use of the Service for the applicable month. Service Credits will be made in the form of a monetary credit applied to future use of the Covered Service and will be applied within sixty (60) days after the Service Credit was requested. Service Credits cannot be redeemed for cash. In the event of termination of the Agreement, unused or unapplied Service Credits are forfeited.

SLA Exclusions. The SLA does not apply to any: (a) features designated experimental, beta, in trial, limited preview, or preview (unless otherwise set forth in the associated documentation), (b) features excluded from the SLA (in the associated documentation), or (c) errors or problems: (i) caused by factors outside of Apto’s reasonable control; (ii) that resulted from Customer’s software or hardware or third party software or hardware, or both; (iii) that resulted from abuses or other behaviors that violate the Agreement; (iv) arising from suspension or termination of the Subscription Services; or (v) arising from downtimes or issues from our Third Party backbone and hosting services provider.

