

# Appirio Crowdsourcing Catalog Software License Agreement

## Terms and Conditions

The Terms and Conditions below apply to all transactions between Appirio Inc., 760 Market Street, 11<sup>th</sup> Floor, San Francisco, CA 94102 (“Appirio”) and the customer (“Customer”) identified on a Statement of Work or Order Form (collectively, “SOW”) executed by Appirio and Customer, that refers to these Appirio Crowdsourcing Catalog Software License Agreement Terms and Conditions (“CS Agreement”). References to “Appirio” herein shall also refer to Appirio’s affiliated entities, as applicable, including Topcoder, Inc. (“Topcoder”), a wholly owned subsidiary of Appirio (and the owner of the intellectual property rights in and to the License Software referenced below). Any additional terms in a purchase order or similar document for products or services under this CS Agreement other than the SOW are explicitly rejected, and, in the event of conflicting terms this CS Agreement shall prevail. A “Party” means Customer, or Appirio, and the “Parties” means Customer and Appirio. Capitalized terms used herein but not defined have the meanings assigned to them in the Technology Enabled Services and Crowdsourcing Agreement available at: <http://www.appirio.com/standardtermsconditions>. In the event of a conflict between the terms of this CS Agreement and the terms of another agreement or SOW executed between Customer and Appirio, solely with respect to the Licensed Software (as defined below), this CS Agreement shall prevail.

1. Effective Date and Term: The Effective Date is the start date designated on the SOW. The term of this CS Agreement shall be the time period specified on the SOW beginning on the Start Date and ending on the End Date (“Term”).

2. Licensed Software: Appirio Licensed Software means the Appirio Crowdsourcing (formerly Topcoder) Catalog software components (including without limitation binary code, source code, and technical documentation) identified on an SOW (and which may include, but are not limited to, the catalog components listed via <http://software.topcoder.com/catalog/index.jsp>). If the SOW specifies a subscription or other order of Licensed Software, the Licensed Software includes each catalog component specified in Challenges run during the Term for use in the Custom Software developed for Customer using Appirio’s Crowdsourcing Platform.

3. Fees: In exchange for the license granted in this CS Agreement, Customer shall pay to Appirio the fees set forth on the SOW.

4. License. Subject to full payment of all fees and the terms and conditions of this CS Agreement, Appirio (on its own behalf and on behalf of Topcoder) grants to Customer:

(i) during the Term, a non-exclusive, non-transferable (except as specifically set forth in this CS Agreement) license under Topcoder’s intellectual property rights in Licensed Software to develop Customer’s Custom Software by incorporating (or having incorporated) the Licensed Software into such Custom Software, and

(ii) during the Term and after the Term, a non-exclusive, perpetual, worldwide, license under Topcoder’s intellectual property rights in such Licensed Software to copy, modify, distribute, publicly perform, publicly display, make, use, and sell such Custom Software incorporating such Licensed Software; provided, however, that Customer may not publish the source code for the Licensed Software as open source software or otherwise, and Customer may not sublicense, distribute or resell the Licensed Software to any third party separate from or for use other than as incorporated into the Custom Software developed for Customer.

5. Title. Topcoder retains all right, title and interest in and to the Licensed Software. Any use of the Licensed Software beyond the scope of the rights expressly granted herein is prohibited. Customer shall retain Topcoder’s copyright notices and authorship credits in the Licensed Software and associated documentation. Nothing in this CS Agreement shall be

construed so as to prohibit Topcoder from reusing the Licensed Software, or licensing the Licensed Software to others.

6. Usage Audit. If Appirio believes that Customer has used the Licensed Software or the Crowdsourcing Platform outside the scope of this CS Agreement, upon reasonable notice, Appirio may conduct an audit of Customer's use during Customer's normal business hours. Appirio will comply with reasonable security requirements of Customer while conducting such audit.

7. Export Compliance. Regardless of whether Customer is a US-based entity, Customer shall not export or re-export any of the Licensed Software (in whole or in part) to any country without ensuring that such export complies with the Export Administration Regulations of the U.S. Department of Commerce, and any other applicable statute, regulation, or government order.

8. Support/Warranty: If Customer has purchased a subscription to Licensed Software during the Term, Appirio warrants to Customer that the Licensed Software will perform substantially as described in the documentation and will not contain any malicious code (e.g., viruses, time bombs, or trap doors). If the Licensed Software fails to so perform during the applicable warranty period, Customer shall promptly notify Appirio in writing of and adequately describe the failure, and Customer's exclusive remedy and Appirio's sole obligation shall be to take the actions described in this Section 8 with regard to reproducible errors. Appirio will provide 24 hour access to on-line forums, and telephone and e-mail support services for the Licensed Software during Appirio's normal business hours ("Support"). Support shall be provided for the purpose of investigating errors in unmodified versions of the Licensed Software that have been reported and documented in writing by Customer during the applicable warranty period. During the applicable warranty period, Appirio will use commercially reasonable efforts to bring the Licensed Software into substantial conformance with the documentation.

9. Warranty Limitations and Exclusive Remedy. Because the Licensed Software is complex, Appirio does not warrant that it is error-free or that its use will be uninterrupted. The warranty set forth in Section 8 does not apply to Licensed Software that has been modified, damaged, or installed or operated contrary to the documentation. THE FOREGOING WARRANTIES ARE EXCLUSIVE REMEDIES AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. APPIRIO MAKES NO OTHER WARRANTY OF ANY KIND TO CUSTOMER OR TO ANY OTHER PARTY. No statement by Appirio's personnel or otherwise shall be deemed to be a warranty by Appirio for any purpose or to give rise to any liability on the part of Appirio unless contained in this CS Agreement. The Parties acknowledge and agree that the fees charged by Appirio under this CS Agreement reflect the allocation of risks provided by the foregoing warranty, the limitations of liability, and other terms set forth in this CS Agreement, and any modification of the allocation of risks would affect the fees charged.

10. Term and Termination: This CS Agreement will begin on the Effective Date and will continue until terminated as described in this Section 10: (a) if any material breach of this CS Agreement by either Party continues after ten days' written notice of the breach to the other Party, the Party giving notice may terminate this CS Agreement immediately; or (b) either Party may terminate this CS Agreement upon the occurrence of any of the following: (i) the other Party makes an assignment for the benefit of creditors; (ii) a petition under any foreign, state or United States bankruptcy act, receivership statute, or the like is filed by or against the other Party; or (iii) the other Party ceases doing business in the ordinary course. Customer shall remain obligated for all Fees through the effective date of termination, including for Challenges which have launched but have not ended.

Section 4 (License), Section 5 (Title), Section 7 (Export Compliance), Section 8 (Support/Warranty), Section 9 (Warranty Limitations and Exclusive Remedy), Section 10 (Term and Termination), Section 11 (Limitation of Liability), and Section 13 (General) of these Terms and Conditions shall survive any termination or expiration of this CS Agreement.

11. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER, UNDER THIS CS AGREEMENT OR OTHERWISE FOR ANY CLAIM ARISING OUT OF OR RELATED TO A PARTY'S PERFORMANCE OF ITS OBLIGATIONS HEREUNDER, FOR ANY INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF DATA OR USE OF DATA OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS CS AGREEMENT EXCEED THE FEES PAID UNDER THIS CS AGREEMENT FOR THE 12 MONTHS PRECEDING SUCH CLAIM.

**12. CLAIMS OF INFRINGEMENT.**

12.1 **Infringement.** If Appirio becomes aware or reasonably believes that the Licensed Software (the "Covered Software") provided to Customer are or are likely to become, the subject of a claim of infringement, then Topcoder shall, at its option and expense either (i) procure for Customer the right to use the Covered Software or portion thereof, or (ii) replace or modify the Covered Software or portion thereof to make them non-infringing, or (iii) if the options described in clauses (i) and (ii) are not commercially practical, accept the return of the Covered Software (or the portion thereof), terminate any licenses granted hereunder on such Covered Software, and refund the undepreciated portion of the fees paid by Customer for that portion of the Covered Software, assuming a 36-month straight-line depreciation schedule.

12.2 **Entire Liability.** THIS SECTION 12 STATES THE ENTIRE LIABILITY OF APPIRIO AND TOPCODER WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHTS, TRADE SECRETS, PATENTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS RELATED TO THE DELIVERABLES, THE LICENSED SOFTWARE OR THEIR USE.

**13. GENERAL.**

13.1 **Governing Law.** This CS Agreement shall be governed in all respects by the laws of the State of California, USA without giving effect to principles of conflict of laws. The Parties agree to submit to the jurisdiction of state and federal courts located in San Francisco County, California for any claim relating to this CS Agreement. The United Nations Convention for the International Sale of Goods shall not apply to this CS Agreement.

13.2 **Notices and Waiver.** All notices under this CS Agreement shall be in writing and shall be deemed to be made when delivered by overnight courier service to the Customer Representative of such party with a copy to the Legal Department of such party at the address set forth on the first page of this CS Agreement, or to such other address as either party may specify by notice. If one Party fails to enforce a provision of this CS Agreement, it shall not be precluded from enforcing the same provision at another time.

13.3 **Merger and Amendment.** This CS Agreement supersedes all previous agreements, whether oral or written, with respect to its subject matter. Neither this CS Agreement nor any addendum may be modified or amended except by a written document which is executed by authorized representatives of Appirio and Customer. If any provision of this CS Agreement is deemed unenforceable or invalid by law or by a court decision, the provision shall be changed and interpreted if possible to accomplish the intent of the provision within the constraints of the law. In the event the provision may not be so changed or interpreted, then only that provision, and not the entire agreement, shall be invalidated.

13.4 **Force Majeure.** Notwithstanding any provision to the contrary in this CS Agreement, if either party is prevented from complying, either totally or in part, with any of its obligations under this CS Agreement because of matters outside such party's reasonable control (i.e., a *force majeure* event), then upon written notice to the other Party, such obligations will be suspended during the period of such disability.

13.5 **Independent Parties; Assignment.** Nothing contained in this CS Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the

be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. Neither Party may assign this CS Agreement in whole or in part without the prior written consent of the other Party, except that either Party may assign this CS Agreement without the written consent of the other Party to an acquiror of all or substantially all of the assets of the other Party or of the line of business to which this CS Agreement relates, provided that the assignee in all cases expressly assumes, in a writing delivered to the non-assigning Party, all of assigning Party's rights and obligations under this CS Agreement and that licenses granted to Customer in Section 4 (License) are limited to such line of business. Any attempted assignment, delegation or transfer by an assigning Party in violation hereof shall be null and void. Subject to the foregoing, this CS Agreement shall be binding on the Parties and their permitted assigns.

13.6 Corporate Authority. Each Party represents to the other Party that it has the full corporate right, power and authority to enter into this CS Agreement and perform its obligations hereunder; and that when executed and delivered, this CS Agreement will constitute its legal, valid and binding obligation enforceable against it in accordance with its terms.

13.7 Government Rights. Licensed Software acquired for use under a U.S. Government contract, is subject to RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in FAR §12.212(a) or DFARS §227.7202-1(a). The manufacturer is Topcoder, Inc., c/o Appirio Inc., 760 Market Street, 11<sup>th</sup> Floor, San Francisco, CA 94102.