



Terms of Service

THIS AGREEMENT GOVERNS THE USE OF THE PLATFORM BY YOU, YOUR EMPLOYEES OR ANY OTHER INDIVIDUAL DESIGNATED BY YOU TO USE THE PLATFORM ON YOUR BEHALF. BY SIGNING THIS AGREEMENT OR ACCEPTING THIS AGREEMENT (OR ANY APPLICABLE ORDER FORM) OR USING THE PLATFORM YOU SIGNIFY YOUR CONSENT TO BE BOUND BY THE AGREEMENT AND THAT YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT. IF YOU DO NOT AGREE TO THE AGREEMENT YOU MUST NOT USE THE PLATFORM. ONCE ACCEPTED, THE AGREEMENT SHALL CONSTITUTE A BINDING CONTRACT BETWEEN UPSOLVER AND YOU. EACH OF UPSOLVER AND YOU MAY BE REFERRED HEREIN AS A "PARTY" AND COLLECTIVELY AS THE "PARTIES".

THE AGREEMENT

1. Definitions

- 1.1. "*Affiliates*" - means with respect to any entity, any entity that, controls, is controlled by, or is under common control with, such entity.
- 1.2. "*Agreement*" – means these terms of services, as well as any Order Forms which have been executed between the Parties or was accepted by Upsolver.
- 1.3. "*Authorized Users*" – means employees or service providers who are authorized by the Customer to access and use the Platform on its behalf.
- 1.4. "*Cloud Provider*" – AWS or Azure, as set under the Order Form.
- 1.5. "*Concurrent Jobs*" - means the number of transformation jobs or outputs, running concurrently per hour.
- 1.6. "*Customer*" (also referred to as "you", or "yourself") – means legal entity or individual accepting the Agreement.
- 1.7. "*Customer Data*" – means content or partial content of files fed through Upsolver's Platform by the Customer and any additional data created by the Platform (enrichments, aggregations etc.) based on such content.
- 1.8. "*Data Protection Requirements*" – means the GDPR, Local EU/EEA Data Protection Laws, and any applicable laws, regulations, and other legal requirements relating to (i) privacy and data security; and (ii) the use, collection, retention, storage, security, disclosure, transfer, disposal, and other processing of any personal data.
- 1.9. "*Data Scanned*" – means the amount, measured in Gigabytes (GB), of uncompressed data scanned and processed by Upsolver per hour.
- 1.10. "*Deployment*" – means the deployment of Upsolver's Platform on servers according to the Customer's preference and the specific Plan limitations. Servers can reside in Upsolver's cloud instance or Customer's cloud instance; all subject to each applicable Plan limitations.
- 1.11. "*Fees*" – means the applicable fees due for aggregate amount of Data Scanned (or to be scanned). The fee per Gigabytes (GB) of Data Scanned, shall be calculated based on the following parameters, in correlation, as set under the Order Form (i) the amount of data scanned; and (ii) the number of Concurrent Jobs, as all set forth under the applicable Order Form.
- 1.12. "*GDPR*" - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.13. "*Marketplace*" - the applicable Cloud Provider Market Place.



- 1.14. *"Payment Method"* – means (other than with respect to free version) either one or a combination of the methods set forth under the applicable Order Form.
- 1.15. *"Platform"* – means Upsolver's proprietary platform, as set forth under the applicable Order Form.
- 1.16. *"Provisioning Data"* – means any data generated from the use of Upsolver's platform, which excludes Customer's Data (e.g., error logs, usage statistics, billing information, objects created in Upsolver's platform etc.).
- 1.17. *"Term"* – as set forth under section 6.
- 1.18. *"Upsolver"* (also referred to as "we", "us", or "our") – means the Upsolver entity which executed or accepted the order form (or any other purchase order and/or pricing page or custom offer which for all purposes shall also be considered as an order form (each an **"Order Form"**)), or if no Order Form was executed, Upsolver Inc.
- 1.19. *"Customer VPC"* – means Customer's virtual private cloud that is fully managed by Customer.

2. General

- 2.1. Each of the Parties hereby warrants and represents to the other Party that: (i) it has full power and authority to enter into and perform its obligations under this Agreement; (ii) the execution, delivery and performance of this Agreement was duly authorized; and (iii) If it is a corporation, it's in good standing under the laws of the place of its incorporation.
- 2.2. Subject to your compliance with the terms of this Agreement including payment of the Fees (to the extent applicable), we grant you a limited, non-exclusive, revocable, non-transferable, and non-sub licensable right, to use the Platform during the term of the Agreement, as set forth under the Order Form. The use of the Platform shall be (i) strictly by your Authorized Users; (ii) solely for your internal business purposes; and (iii) in accordance with the other requirements of this Agreement and the Platform's documentation available on Upsolver's website (as may be updated from time to time) and with Upsolver's instructions. Upsolver will provide notice on its website of any material update to documentation as soon as reasonably possible.
- 2.3. Notwithstanding the above, if you use free (including trial) version of the Platform, your use of the Platform may be limited in period or Data Scanned or Concurrent Jobs consumption, all as applicable under the Order Form. We reserve the right to modify, limit the functionalities and/or discontinue the provision of such versions at any given time, by providing 7 days prior notice to that effect. Please note that upon the end of your authorized use period or at such time as Upsolver shall elect to cease offering free versions, and unless you became a paying Customer, you may lose access to Upsolver's Platform and to any applicable pipeline code and any other data stored in Upsolver's cloud. As you do not make any payments for using the unpaid versions, we shall not have any liability for the use of the Platform or provide any warranty regarding the Platform. Your sole remedy for any claim related to such use, will be to cease use of the Platform.
- 2.4. During the Term and if separately agreed to between you and Upsolver, Upsolver directly or through third parties, shall provide you those professional services separately agreed to under the Order Form.

3. Fees and Expenses

- 3.1. In consideration for the Service provided, Customer shall pay the Cloud Provider or the Company (as set forth under the applicable Order Form) the Fees set forth in the Order Form or on the Marketplace, as applicable (plus any applicable taxes) (the **"Subscription Fee"**). To the extent payment shall be made to the Cloud Provider (according to the Order Form), the Cloud Provider shall be responsible for paying the Subscription Fees to Upsolver, subject to Cloud Provider 's agreement with Upsolver. -If the Subscription Fee is not paid to the Cloud Provider (or to Upsolver, if the Order Form states explicitly that the Subscription Fee shall be paid directly to Upsolver), it shall be deemed a material breach of these Terms entitling Upsolver to suspend or terminate the provision of the Service.



- 3.2. If Customer deploys Upsolver's products to its own cloud account, Customer will bare all infrastructure and/or provider costs related to its cloud account.
- 3.3. If Customer deploys to Upsolver managed cloud, Upsolver will assume the compute and temporary storage costs of ingesting and processing Customer's data. Customer will assume the compute, storage and data transfer costs required to move data into and out of Upsolver Cloud.

4. Customer's Data

- 4.1. Subject to Customer's election of the Upsolver service it seeks to procure from Upsolver, Customer Data will either be maintained in Upsolver's managed cloud or in Customer's VPC. Customer acknowledges that if it elects to use its Customer VPC to store data, then Upsolver's Platform will function within such Customer VPC to process the Customer Data and such data will be temporarily stored within the Random-Access Memory (RAM) of the Upsolver Platform until the occurrence of a server shut down at which time the Customer Data will be deleted and irrecoverable. Solely for clarification, even in the case of Customer seeking to have its data stored on the Upsolver cloud, Customer will be limited by the applicable capacity requirements communicated by Upsolver (i.e., based on the type of account that Customer establishes for itself among other factors), and any Customer Data beyond such limits will be the responsibility of Customer to store. Notwithstanding anything hereunder to the contrary, Upsolver may store Customer's contact and billing information within its own cloud account.
- 4.2. Upsolver's use of any Customer Data transmitted by Customer (whether such data is processed on the Upsolver cloud or via Customer's VPC) shall be limited to the provisioning of the Platform functionality. In addition, for any Customer Data processed by Upsolver on its cloud (i.e., in connection with Upsolver's managed cloud services), Customer acknowledges that the Upsolver cloud (and by extension, the Customer Data) will be hosted and managed using infrastructure and services provided by a third-party cloud provider (i.e., Amazon Web Services and/or Microsoft Azure).
- 4.3. Customer hereby warrants and represents that (i) it has all requisite rights, authority and consents under applicable Data Protection Requirements for the Customer Data to be processed via the Upsolver Platform and for Upsolver to lawfully access and process such data in the manner contemplated by this Agreement, and (ii) if applicable, it has all requisite rights and authority to transmit the Customer Data to the Upsolver cloud.

5. Restrictions

- 5.1. Except as expressly provided herein, you may not use, or have others use, or provide to third parties, access to use the Platform or any part thereof. you may not use the Platform for any activity that constitutes, or encourages conduct that would constitute, a criminal offense, give rise to civil liability or otherwise violate any applicable law. You may not disassemble, de-compile, reverse engineer or create derivative works from the Platform or any part thereof. You may not use the Platform in order to develop, or create, or permit others to develop or create, a similar or competitive product or service. You may not lease, lend, sell, market, license, sublicense, distribute, transfer any of your rights to use the Platform or otherwise grant to any person or entity any right to use the Platform except to the extent expressly permitted hereunder. You may not and may not attempt to breach the security of the Platform or identify any security vulnerabilities thereof, or to interfere with, circumvent, manipulate, impair or disrupt the operation, or the functionality of the Platform.
- 5.2. You shall ensure that all your Authorized Users comply with the terms of this Agreement and you shall be liable for any breach thereof by any of your Authorized Users. You will notify us immediately upon becoming aware of any, actual or suspected, unauthorized use of the Platform by your Authorized Users.
- 5.3. We reserve the right to immediately block and/or discontinue, without liability, the access to the Platform to any Customer that is in breach of the provisions of this section 5.

6. Term and Termination



- 6.1. This Agreement commences upon your acceptance and shall continue to be in full force and effect unless terminated according to the following:
 - 6.1.1. By either Party, at any time, following 90 days period as of the expiration of any applicable Order Form (i.e., lapse of the applicable period under each applicable Order Form or the consumption of all pre-paid use of the Platform pursuant to any applicable Order Form);
 - 6.1.2. By either Party pursuant to a material breach by the other Party that was not cured within 30 days after notification of such breach; and in all cases subject to the other provisions of this Agreement concerning termination.
- 6.2. Upon termination of this Agreement:
 - 6.2.1. We may, in our discretion, terminate the Customer's and its Authorized Users' access to the Platform and to the extent the deployment is to Upsolver managed cloud, we reserve the right to delete any Customer Data within the Platform or within Upsolver's cloud;
 - 6.2.2. If the Agreement is terminated due to Customer's breach, Customer will pay all then-outstanding Fees through the Cloud Provider marketplace. For the avoidance of doubt, other than as set forth under Section 6.2.3, in no event, Upsolver will reimburse or refund the Customer for the Fees that have been pre-paid for use of the Platform not realized prior to such termination.
 - 6.2.3. If the Agreement is terminated due to Upsolver's material breach, Upsolver will reimburse Customer any Fees that have been pre-paid for use of the Platform not realized.
 - 6.2.4. Customer must cease any and all use of the Platform and cause all other Authorized Users of the Customer to cease any and all use of the Platform.
 - 6.2.5. For the avoidance of doubt, it shall be clarified that Customer shall have no rights to receive any further services through the Platform or otherwise under this Agreement.
- 6.3. Sections 3,4,5,6,8,9,10,11,12, 13 and 14 herein will survive any termination of this Agreement.

7. Support and Maintenance

- 7.1. Unless with respect to Customer who purchased enterprise support package, which shall be governed by the enterprise support terms provided to such Customer, Upsolver will respond to questions, problems and inquiries deemed by Upsolver to be of a critical nature, whenever submitted, within four (4) hours of approach.
- 7.2. We may modify, adapt, improve, or enhance the Platform, or any of its features, user interface, design or any other aspect related to it, without being obligated to provide you with notice thereof.
- 7.3. You agree to cooperate, and work closely with us, to reproduce malfunctions, including conducting diagnostic or troubleshooting activities, as we reasonably request.

8. Intellectual Property

- 8.1. As between the Parties, all rights, title and interest, including copyrights, trademarks, trade names, trade secrets and any other intellectual property rights, as well as any goodwill associated therewith, in and to the (i) Platform or any part thereof, including without limitation computer code, graphic design, layout and the user interfaces of the Platform (and also including without limitation in any other information derived from the Platform which is not the Customer Data, such as without limitation, Provisioning Data), and (ii) all derivatives, improvements, updates, enhancements and variations of the foregoing, so long as they are not based on Customer's confidential information, are and will remain at all times, owned by, (or licensed to, if such are licensed from third parties), Upsolver. Other than the limited use rights expressly granted by this Agreement, this Agreement does not grant, sell, transfer, or assign to you or to any Authorized User, a right, title or interest in or to patents, copyrights, trademarks (whether registered



or unregistered), trade names, trade secrets, domain names or any other rights, functions, licenses, or content with respect to, or in connection with, the Platform.

- 8.2. Customer is not required to provide any feedback or commentary with respect to the Platform or otherwise to Upsolver, but to the extent Customer provides feedback about the features and functionality of the Platform, Customer transfers to Upsolver all right, title and interest that Customer may have in and to such feedback, provided that Customer makes no representations or warranties regarding the feedback, including but not limited to the ownership or rights in such feedback.
- 8.3. Notwithstanding the foregoing and for the avoidance of any doubt, you will retain any and all rights, title and interest, including copyrights, trademarks, trade names, trade secrets and any other intellectual property rights Customer may have, and any goodwill associated therewith, in and to your Customer Data.

9. Privacy & Data Security

Upsolver will materially comply with all laws and regulations applicable to its Deployment of the Platform and processing of Customer Data (whether on the Upsolver cloud or within Customer's VPC), including security breach notification laws and Data Protection Requirements. Upsolver's Data Protection Addendum ("DPA") sets forth Upsolver's obligations with respect to the processing and security of the Customer Data via the Platform. The DPA is hereby incorporated by reference into this Agreement. Upsolver does not determine whether Customer's data includes information subject to any specific law or regulation. All security incidents associated with Customer Data are subject to the security incident notification terms below. In the event of any conflict or inconsistency between the DPA any of the terms in this Agreement, the DPA terms shall prevail.

10. Disclaimer of Warranty and Limitation of Liability

- 10.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY INCLUDING ITS EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS AND ANYONE ACTING ON SUCH PARTY'S BEHALF, WILL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE DAMAGES, LOSSES (INCLUDING LOSS OF PROFIT AND LOSS OF DATA), COSTS, EXPENSES AND PAYMENTS, EITHER IN TORT, CONTRACT, OR IN ANY OTHER FORM OR THEORY OF LIABILITY, ARISING FROM, OR IN CONNECTION, WITH THIS AGREEMENT OR THE PLATFORM. THE TOTAL AND AGGREGATE LIABILITY OF EITHER PARTY (AND ITS RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON THEIR BEHALF) TO THE OTHER PARTY FOR DIRECT DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT OR THE PLATFORM SHALL BE LIMITED TO THE FEES PAYABLE TO UPSOLVER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT PURPORTEDLY GIVING RISE TO THE FIRST CLAIM MADE HEREUNDER ("LIABILITY CAP"). NOTWITHSTANDING THE ABOVE, THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER AS WELL AS YOUR PAYMENT OBLIGATIONS FOR THE APPLICABLE FEES HEREUNDER, EITHER PARTY'S BREACH OF SECTION 8 (INTELLECTUAL PROPERTY), OR YOUR BREACH OF SECTION 5 (RESTRICTIONS) SHALL NOT BE SUBJECT TO THE LIABILITY CAP.
- 10.2. ALTHOUGH WE USE SKILL AND EFFORTS TO DEVELOP THE PLATFORM, WE DO NOT GUARANTEE, MAKE NO REPRESENTATION, AND PROVIDE NO WARRANTY (I) ABOUT THE ACCURACY OR COMPLETENESS OF THE EXPECTED BUSINESS RESULTS, OUTCOME OR OPERATIONAL BENEFITS FROM UTILIZING THE PLATFORM AND UPSOLVER HAS NO RESPONSIBILITY OR LIABILITY, REGARDING THE CUSTOMER'S RELIANCE UPON, OR USE OF, THE PLATFORM, THE CUSTOMER'S ACTIONS OR OMISSIONS IN CONNECTION WITH THE PLATFORM, OR ANY CONSEQUENCES RESULTING THEREFROM; (II) THAT THE PLATFORM WILL OPERATE IN AN UNINTERRUPTED OR ERROR-FREE MANNER; AND (III) THAT IT WILL ALWAYS BE AVAILABLE, FREE FROM ERRORS, OMISSIONS OR MALFUNCTIONS.
- 10.3. THE SERVICES OR FACILITIES OF CERTAIN THIRD PARTIES NOT ACTING ON BEHALF OF UPSOLVER, INCLUDING WITHOUT LIMITATION HOSTING SERVICES OR MARKET PLACE PLATFORM PROVIDERS, MAY BE REQUIRED TO BE RECEIVED IN ORDER TO RECEIVE USE OF THE PLATFORM. YOU ACKNOWLEDGE THAT (I) SUCH THIRD PARTY PROVIDERS



ARE NOT PART OF UPSOLVER'S ORGANIZATION, ARE NOT ACTING ON UPSOLVER'S BEHALF, AND UPSOLVER CANNOT ASSURE THEIR COMPLIANCE WITH THESE TERMS OR ANY OTHER REQUIREMENTS; AND (II) UPSOLVER WILL HAVE NO LIABILITY WHATSOEVER WITH RESPECT TO THE ACTS OR OMISSIONS OF SUCH THIRD-PARTY PROVIDERS (INCLUDING WITHOUT LIMITATION THEIR FAILURE TO COMPLY WITH ANY TERMS OR REQUIREMENTS FOR USE OF THE SERVICES).

- 10.4. EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT THE PLATFORM IS PROVIDED TO YOU "AS IS" AND "AS AVAILABLE". WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, WORKMANSHIP, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, COMPATIBILITY OR PERFORMANCE.

11. Indemnity.

- 11.1. By Customer - You agree to indemnify and hold harmless Upsolver and its directors, officers, employees, and subcontractors, upon our request and at your own expense, from and against any damages, loss, costs, expenses and payments, including reasonable attorney's fees and legal expenses, arising from any third-party complaint, claim, plea, or demand in connection with any third-party claim regarding to breach by the Customer of any applicable law.
- 11.2. By Upsolver - Upsolver agrees to indemnify and hold you and your directors, officers, employees, and subcontractors harmless, at Upsolver's own expense, from and against any damages, loss, costs, expenses and payments, including reasonable attorney's fees and legal expenses, arising from a third-party claim that the Platform, when used within the scope of this Agreement, infringes any intellectual property rights of a third-party. The foregoing indemnity obligation of Upsolver does not apply to claims to the extent arising from, if and as relevant: (i) the combination of the Platform with other products not supplied by or on behalf of Upsolver where such claim would not have arisen from the use of the Platform standing alone, (ii) compliance by Upsolver with your written specifications, where such claim would not have arisen from the use of the Platform without compliance with your written specifications, (iii) any modification of the Platform not made by or on behalf of Upsolver, where such claim would not have arisen but for such modification, or (iv) where you continue an activity where such claim would not have arisen but for such activity after having received and had a commercially reasonable time to install modifications from Upsolver that would have completely avoided the activity.
- 11.3. General – As a condition to the Parties' respective indemnification obligations hereunder, the indemnified Party shall promptly notify the indemnifying Party of any claim subject to indemnification; provided that the indemnified Party's failure to do so shall not affect the indemnifying Party's obligations hereunder, except to the extent that the indemnified Party's failure to promptly notify the indemnifying Party materially delays or prejudices the indemnifying party's ability to defend the claim. The indemnifying Party will have the right to solely defend against any such claim with counsel of its own choosing and to settle such claim as the indemnifying Party deems appropriate, provided the indemnifying Party shall not enter into any settlement without the indemnified Party's prior written consent.

12. Confidentiality.

Both Parties acknowledge that the terms of this Agreement and any other information that a Party hereunder (the "**Recipient**") may be exposed to during the performance of this Agreement, constitute the confidential information ("**Confidential Information**") of the other Party (the "**Disclosing Party**"). The Recipient acknowledges that Confidential Information constitutes valuable proprietary information of the Disclosing Party, and that unauthorized disclosure, transfer, or use of, or unauthorized provision of access to, such information is prohibited and could cause irreparable harm to the Disclosing Party. The Recipient may not disclose the Confidential Information and must hold such information in confidence using the same degree of care that it uses to prevent the unauthorized dissemination or publication of Recipient's own confidential information but in no case less than a reasonable degree of care.

The Recipient will not disclose the Disclosing Party's Confidential Information, except to its respective officers, directors, employees, agents, consultants and subcontractors, on a strict 'need to know' basis, provided they are

bound by sufficient confidentiality obligations. The confidentiality and non-use obligations hereunder shall not apply to any information the Recipient can demonstrate: (i) is or becomes generally available to the public, through no breach by the Recipient of this Agreement; (ii) was lawfully in Recipient's possession or known by Recipient prior to receipt from the other Party, as evidenced by written records; (iii) was rightfully disclosed to the Recipient without restriction by a third Party who is not bound by any confidentiality obligations with respect thereto; (iv) was developed by the Recipient without use of or reference to the Disclosing Party's confidential information; or (v) is required to be disclosed by law, provided that, if legally permitted to do so, the Recipient will give prompt prior notice of such requirement to the Disclosing Party, in order to allow the Disclosing Party to intervene and protect its interests in such information.

13. Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflict of law principles. Any dispute, controversy or claim which may arise out of or in connection with this Agreement or our services hereunder, shall be submitted to the sole and exclusive jurisdiction of the competent New York State Courts located in New York County and the U.S. District Court for the Southern District of New York.

- 13.1. Subject to the aforesaid, you and Upsolver, each hereby expressly consent to the exclusive personal jurisdiction and venue of such courts, and waive any objections related thereto including objections on the grounds of improper venue, lack of personal jurisdiction or *forum non conveniens*.
- 13.2. Notwithstanding the foregoing (i) either Party may lodge a claim against the other Party pursuant to the indemnity clause above, in any court adjudicating a third-party claim against us; and (ii) either Party may also seek interim or emergency relief in the competent courts located in the jurisdiction in which the other Party is incorporated.

14. General Terms.

- 14.1. **Force Majeure.** Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, internet or cloud resources failure, infrastructure, hardware and software failure, network or computer equipment failures, pandemics telecommunication equipment failure, electrical power failures, strikes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals or loss of or fluctuations in heat, light or air conditioning.
- 14.2. **Assignment.** You may not assign the Agreement without our prior written consent, which we shall not unreasonably withhold. Any purported assignment without our prior written consent is void. Each Party may assign this Agreement in its entirety, including all rights, duties, liabilities, performances, gathered Customer's Data and obligations herein upon a merger, acquisition, change of control or the sale of all or substantially all of its equity or assets. By virtue of such assignment, the assignee assumes in the assigning Party's stead, including all rights, duties, liabilities, performances and obligations hereunder, and the assigning Party is released therefrom.
- 14.3. **Relationship of the parties.** The relationship between the Parties hereto is strictly that of independent contractors, and neither Party is an agent, partner, joint venture or employee of the other.
- 14.4. **Reference.** Upsolver may reasonably use Customer's name and logo on its website as a customer of Upsolver.
- 14.5. **Complete Terms and Severability.** This Agreement constitutes the entire and complete agreement between you and us concerning the subject matter herein. This Agreement supersedes all prior oral or written statements, understandings, negotiations and representations with respect to the subject matter herein. If any provision of this Agreement is held invalid or unenforceable, that provision shall be construed in a manner consistent with the



applicable law to reflect, as nearly as possible, the original intentions of the Parties, and the remaining provisions will remain in full force and effect. This Agreement may be modified or amended only in writing, signed by the duly authorized representatives of both Parties. In the event of a conflict between these terms of service and an order form executed by both Parties, these terms of service shall prevail, unless such Order Form explicitly specifies the contemplated issue in these terms of services is to be modified by such Order Form.

- 14.6. **No waiver.** Neither Party will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other Party, of any terms or provisions of this Agreement. The waiver, by either Party, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

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DATA PROCESSING ADDENDUM

This **DATA PROCESSING ADDENDUM** (this “**DPA**”) is effective as of the effective date of that certain Agreement by and between Upsolver and Customer, is incorporated into such Agreement, and reflects the parties’ consent with regard to the Processing of Personal Data. This DPA consists of the main body of the DPA, together with any and all attached Exhibits, Schedules and Appendices. The Customer’s agreement to the Agreement constitutes its binding agreement to this DPA (and the SCCs, as applicable).

DATA PROCESSING TERMS

1. DEFINITIONS

In addition to the defined terms set forth in this DPA, all other capitalized terms hereunder which are not defined below shall have the meanings attributed to them under that certain Terms of Services.

“**Agreement**” means that certain binding Terms of Services under which Customer is subject by subscribing for use of Upsolver’s Platform, as such terms may be amended and updated from time to time.

“**Customer**” means the legal entity entering into the Agreement.

“**Data Controller**” means the entity that determines the purpose and means of the Processing of Personal Data.

“**Data Processor**” means the entity that processes Personal Data on behalf of the Data Controller.

“**Data Protection Laws**” means all laws and regulations applicable to the Processing of Personal Data under the Terms of Service, including the Regulation (EU) 2016/679 (General Data Protection Regulation) (the “**GDPR**”).

“**Data Subject**” means an identified natural person to whom the Personal Data relates.

“**Personal Data**” means any information relating to a Data Subject as defined under the GDPR.

“**Process**” or “**Processing**” means any operation or set of operations which is performed on Personal Data or sets of Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“**Services**” means the services provided by Upsolver to Customer in connection with Upsolver’s Deployment of its Platform, as described under the Agreement.

2. PROCESSING OF PERSONAL DATA

2.1 Roles of the Parties. The parties acknowledge and agree that with respect to the Processing of Personal Data, Customer is the Data Controller and Upsolver is the Data Processor.

2.2 Upsolver’s Processing of Personal Data. Upsolver will Process Personal Data only to the extent necessary pursuant to Customer’s instructions and as set forth in the Agreement. This includes the Processing of Personal Data for or in connection with (i) the provisioning by Upsolver of its Platform for Customer’s benefit, and (ii) Upsolver’s performance of those services, support and maintenance in respect of the Platform.

2.3 Type of Data. The Processing of Personal Data within the scope of this DPA pertains to the Personal Data which Customer may submit via the Services, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following data types/data categories of Personal Data, which shall include: First and last name; address; Email address; phone number (Mobile/Landline); IP Address; ID data; Credit card, bank account, and other financial data; Biometric, health or genetic data.

2.4 Affected Group. The group of Data Subjects affected by the Processing of Personal Data within the scope of this DPA includes: prospects, customers, clients, patients, business partners and vendors of Customer (who are natural persons); Employees, personnel or contact persons of Customer’s prospects, customers, business partners and vendors; and end users and any other Customer users authorized by Customer to use the Services.

- 2.5 Data transfers outside EU/EEA.** Any processing and transfer of Personal Data to a country which is not an EU or EEA member state, Israel or a country which falls under some other exception under applicable Data Protection Laws shall only take place if the specific requirements under applicable Data Protection Laws for such data transfer are met, including without limitation those regarding Upsolver's obligations to comply with the SCCs.

3. TERM AND TERMINATION

The term of this DPA, including its Exhibit, corresponds with the term of the Terms of Service. The DPA, including its Exhibit, will terminate simultaneously and automatically with the termination of the Terms of Service.

4. TECHNICAL AND ORGANIZATIONAL MEASURES

Upsolver implements and maintains the technical and organizational data protection and data security measures described in Schedule 1 appended hereto.

The technical and organizational measures are subject to technological progress and advancements. As such, Upsolver may implement alternative, adequate measures which meet or exceed the security level of the measures described in Exhibit 1.

5. CORRECTION, BLOCKING AND DELETION OF PERSONAL DATA

Upsolver shall, to the extent legally permitted, promptly notify Customer in writing if Upsolver receives a request from a Data Subject to exercise the Data Subject's right of access, right to rectification, restriction of Processing, erasure, data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("**Data Subject Request**"). Unless legally required to do so, Upsolver shall not respond to a Data Subject Request without Customer's prior written consent. Taking into account the nature of the Processing, Upsolver shall assist Customer by appropriate technical and organizational measures and by providing commercially reasonable efforts in the fulfillment of Customer's obligation to respond to a Data Subject Request under Data Protection Laws.

6. CONTROL OBLIGATIONS AND OTHER DUTIES OF Upsolver

In addition to its other obligations under this DPA, Upsolver shall also carry out the following duties: (a) ensure that all employees of Upsolver who have access to Personal Data within the scope of this DPA have undertaken to or are otherwise required to comply with the principle of data secrecy, are obligated to treat the Personal Data as strictly confidential and have been informed (i) of the applicable data protection obligations resulting from this DPA and Data Protection Laws and (ii) of the fact that they are bound to only utilize the Personal Data as per Customer's instructions and for the specified purposes; (b) monitor the proper implementation, fulfillment and execution of this DPA by means of regular inspections carried out by Upsolver; and (c) upon Customer's request, Upsolver shall provide Customer with reasonable cooperation and assistance needed to fulfill Customer's obligation under Regulation (EU) 2016/679 to carry out a data protection impact assessment related to Customer's use of the Services. Upsolver shall provide reasonable assistance to Customer in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks described above.

7. SUBCONTRACTING

Upsolver may engage sub-processors to Process Personal Data in connection with the provision of the Services, including without limitation Upsolver Affiliates. Upsolver must inform the Customer of any intended changes to the list of sub-processors at least 30 days in advance. The Customer shall be entitled to terminate its subscription in case the Customer disapproves the sub-processors and Upsolver fails to provide satisfactory replacements for such sub-processors within a reasonable time following Customer's rejection. Upsolver shall carefully select the sub-processors and shall, prior to the commencement of any sub-processing and in regular intervals thereafter, audit the technical and organizational measures taken by the sub-processors and document the findings. Where Upsolver engages a sub-processor, Upsolver shall be obliged to pass on its contractual obligations under this DPA to the sub-processor and secure audit and monitoring rights as defined in Section 8 for Customer's benefit. Set forth in Schedule 2 hereof of the are those sub-processors of Upsolver which are approved as of the effective date of this DPA.

8. CUSTOMER'S MONITORING RIGHTS

- 8.1.** Customer may monitor Upsolver's compliance of its obligations under this DPA by itself or by a certified auditor that is mutually approved by Customer and Upsolver (whereby Upsolver's approval shall not be unreasonably withheld or delayed). Upsolver will ensure that Customer has the ability to assure itself of Upsolver's adherence to the stipulated technical and organizational measures prior to the commencement of the Processing activities and during the term of this



DPA. For this purpose, Upsolver will, upon Customer's request, provide Customer with evidence that the technical and organizational measures described in **Exhibit 1** have been implemented.

- 8.2.** Alternatively, Upsolver may satisfy its obligations under this Section 8 by presenting current attestations, reports, or excerpts of reports from independent authorities (such as accountants, auditors, data privacy officer, IT security department, data protection auditors or quality auditors) or a suitable certification received within the scope of an IT security or data protection audit (such as pursuant to the German Federal Office for Information Security's "IT-Grundschutz" Certification Program or pursuant to Art. 42 Regulation (EU) 2016/679).

9. NOTIFICATION IN THE EVENT OF VIOLATIONS BY Upsolver

Upsolver shall endeavor to notify Customer in writing in case of violations by Upsolver or its sub-processors of provisions under this DPA to protect Customer's Personal Data. Upsolver shall notify Customer in writing of any loss or unlawful transfer of Personal Data or when third parties gain unauthorized or unlawful access to the Personal Data. This also applies in the event of severe disruptions to business operations or in the event of reasonable suspicion of other violations of Data Protection Laws. In such cases, Upsolver shall undertake, suitable measures, in consultation with Customer, to secure the data and to minimize possible harmful consequences to the Data Subjects affected.

10. STANDARD CONTRACTUAL CLAUSES

Pursuant to Section 2.5, in addition to Customer's other duties and obligations hereunder, Customer hereby agrees to comply with the standard contractual clauses as in effect on the date of this DPA (collectively, the "SCCs").

11. CUSTOMER'S AUTHORITY TO ISSUE INSTRUCTIONS

Customer reserves the right to issue individual instructions regarding the type, scope, and method of Processing. Methodological changes must be coordinated between the parties and documented. Upsolver shall inform Customer immediately in writing if it believes that an instruction violates any Data Protection Laws.

12. DATA DELETION AND RETURN OF DATA STORAGE DEVICES

After completion of the contractually agreed services (or earlier at the Customer's request) – at the latest upon termination of the DPA – Upsolver shall destroy the Personal Data, to the extent such data is identifiable and retrievable, all in accordance with applicable Data Protection Laws. Upon written request by Customer, Upsolver shall present the corresponding deletion logs to Customer.

13. GOVERNING LAW

This DPA shall be governed by the laws of same jurisdiction as agreed in the Terms of Service.

14. CHANGES IN DATA PROTECTION LAWS

Each of Upsolver and Customer may notify the other party in writing from time to time of any variations to this DPA which are required as a result of a change in Data Protection Laws. Any such variations shall take effect on the date falling thirty (30) calendar days after the date such written notice is sent by either Customer or Upsolver, as applicable. Additionally, to the extent applicable, Upsolver shall procure that where necessary, the terms in each contract between Upsolver and each sub-processor are likewise amended to incorporate such variations within the same time period. In the event of a disagreement over any modifications to this DPA as a result of changes in the Data Protection Laws, the other party may terminate this DPA on thirty (30) days' advance written notice.

Technical and Organizational Measures

- *Measures of pseudonymization and encryption of personal data*
- *Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*
- *Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*
- *Processes for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures in order to ensure the security of the processing*
- *Measures for user (i.e., customers) identification and authorization Measures for the protection of data during transmission Measures for the protection of data during storage*
- *Measures for ensuring physical security of locations at which personal data are processed*
- *Measures for ensuring events logging*
- *Measures for ensuring system configuration, including default configuration Measures for internal IT and IT security governance and management Measures for certification/assurance of processes and products*
- *Measures for ensuring data minimization*
- *Measures for ensuring data integrity*
- *Measures for ensuring limited data retention*
- *Measures for ensuring accountability*
- *Measures for allowing data portability and ensuring erasure*



SCHEDULE 2

Pre-Approved Sub-Processors

- *The applicable Cloud Provider (as defined under the Terms of Service)*