

SERVICES AGREEMENT

Order Form

Uptycs Information		Customer Information	
Uptycs, Inc. Contact Details: 404 Wyman St, Suite 357 Waltham, MA 02451 USA Account Representative:	Customer Name:	CustName	
	Address:	Line 1,	
		City, State ZIP	
	Telephone:	+1 XXX-XXX-XXX	
	Fax:		
	Email:	email@custname.com	
	Contact Person:		
	Billing Contact (if different from above):		

Order Information	
Uptycs Service: Uptycs Security Analytics Platform as described in quote #XXXX	
Subscription Term for Service: 12 months from Effective Date	Subscription Fee: \$XXXXXX.XX
Professional Services:	Professional Services Fees: \$ _____
Training:	Training Services Fees: \$ _____
	TOTAL FEES \$ XXXXXX.XX
EFFECTIVE DATE: _____, 20____	

INVOICES
PO Required: <input type="checkbox"/> Yes or <input type="checkbox"/> No; Customer PO #: _____

This Services Agreement is comprised of this Order Form, the Terms and Conditions and the Support and Service Level Policy attached hereto as Appendixes 1 and 2, and the Statement of Work, if any, attached as Appendix 3 (collectively the “Agreement”).

AGREED AND ACCEPTED BY THE PARTIES’ AUTHORIZED REPRESENTATIVES:

Uptycs, Inc.	CUSTOMER: Custname
Signature:	Signature:
Name: Ganesh Pai	Name:
Title:CEO	Title:
Date: _____, 20____	Date:

Appendix 1 -TERMS AND CONDITIONS

1. LICENSE AND SUPPORT. Subject to the terms, conditions and restrictions set forth in this Agreement, including payment of the Subscription Fees set forth in the Order Form, Uptycs hereby grants, and Customer hereby accepts, a non-exclusive, non-transferable, right and license, to access and use, solely for its internal business purposes, (i) the Subscription Service identified on the Order Form (the “Service”), on a hosted basis, in accordance with the user documentation provided with the Service (“Documentation”), and (ii) the Documentation, each for the Subscription Term set forth in the applicable Order Form. Use of the Service is restricted and subject to the number of users and other limitations set forth in the Order Form. During the Subscription Term Uptycs will support the Service in accordance with the Support and Service Level Policy attached as Appendix 2

2. TERM; RENEWAL; TERMINATION

2.1 **Term of Agreement.** This Agreement is effective as of the Effective Date and will continue until the services as described in the Order Form and any Statements of Work (“SOW(s)”) have been completed, expired or terminated.

2.2 **Term and Renewal of Orders.** The Subscription Term described in each Order Form will commence upon the Order Form Effective Date and continue as set forth therein (“Initial Term”) and will automatically renew for additional one (1) year terms (“Renewal Term”) unless either party has given the other party written notice of non-renewal at least ninety (90) days prior to the end of an Initial Term or Renewal Term. Rates for any Renewal Term will not exceed the previous year’s rates by more than the rate of inflation under the Consumer Price Index (All Urban Index, latest year for which statistics are available) plus five percent (5%), unless the parties agree otherwise in writing.

2.3 **Termination** This Agreement and any Service may be terminated only if one party materially breaches this Agreement and fails to cure such breach within thirty (30) days or receipt of notice of the breach from the non-breaching party.

3. FEES; PAYMENT TERMS. Subscription Fees and any other fees for professional services are specified on the Order Form. Customer agrees to pay any pre-approved reasonable travel and living expenses incurred in connection with the provision of services under a SOW. Unless otherwise set forth on the Order Form or a SOW, all fees will be invoiced upon the Effective Date of the Order Form. Payment terms are Net 30 days from the date of receipt of invoice. Customer shall be responsible for all taxes on the fees, except for taxes on Uptycs’ income.

4. RESTRICTIONS; PROPRIETARY RIGHTS. Customer shall not: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, user interface techniques or algorithms of the Service or disclose any of the foregoing; (ii) encumber, transfer, manufacture, distribute, sell, sublicense, assign, provide, lease, lend, use for timesharing or service bureau purposes, or otherwise use (except as expressly provided herein) the Service or Documentation; (iii) copy, modify, adapt, translate, incorporate into or with other software, or create a derivative work of any part of the Service or Documentation; or (iv) attempt to circumvent any user limits, timing or use restrictions that are built into the Service. The Service is the proprietary intellectual property of Uptycs that contains trade secrets and is protected by copyright law. Subject to any license granted hereunder, Uptycs retains sole and exclusive ownership of all right, title, and interest in and to the Service and any other technology used to provide it. Any and all enhancements, modifications, corrections and derivative works that are made to the Service will be considered part of the Service for the purposes of this Agreement and will be owned by Uptycs. Uptycs shall own all rights, title and interest in any deliverables created by Uptycs under a SOW, but all such deliverables shall be licensed to Customer for use in connection with Customer’s use of the Service hereunder. Notwithstanding the foregoing, Customer retains all rights, title and interest in and to Customer’s own information and data, including Customer’s ideas, processes, standards, practices, and management policies and procedures, that is input by Customer into the Service or supplied to Uptycs (“Customer Data”).

5. PUBLICITY. Customer agrees to (a) participate in a press release following the execution of this Agreement naming Customer as a customer of Uptycs, as well as upon successful implementation, (b) allow its name to be used in sales materials and user literature, which references Uptycs’ customers generally, and (c) the use of its name, without endorsement, in a listing of Uptycs’ other customers. Customer shall also make reasonable efforts to, upon Uptycs’ prior reasonable request, serve as a reference account and to participate in case studies and other promotional activity.

6. CONFIDENTIALITY AND SECURITY.

6.1 **Confidentiality.** Each party shall maintain as confidential and shall not disclose (except to its employees, accountants, attorneys, advisors, affiliates, outsourcers and third party service providers of recipient with a need to know in connection with recipient’s performance under this Agreement, and who have been advised of the obligation of confidentiality hereunder), copy or use for purposes other than the performance of this Agreement, any information which relates to the other party’s business affairs, trade secrets, technology, research, development, pricing or terms of this Agreement (“Confidential Information”) and each party agrees to protect all received Confidential Information with the same degree of care that it would use with its own Confidential Information and to prevent unauthorized, negligent or inadvertent use, disclosure or publication thereof. Breach of this Section may cause irreparable harm and damage. Thus, in addition to all other remedies available at law or in equity, the disclosing party shall have the right to seek equitable and injunctive relief, and to recover the amount of damages (including reasonable attorneys’ fees and expenses) incurred in connection with such unauthorized use. The recipient shall be liable to the disclosing party for any use or disclosure in violation of this Section by recipient or its affiliates, employees, third party service providers or any other related party. Confidential Information shall not include information that (a) is already known prior to the disclosure by the owning party; (b) is or becomes publicly known through no breach of this Agreement; (c) is independently developed without the use of the other party’s Confidential Information and evidence exists to substantiate such independent development; (d) information that is obtained from a third party, and that third party is not, in good faith belief to the recipient, under any legal obligation of confidentiality; or (e) the recipient receives written permission from the disclosing party for the right to disclose any Confidential Information.

6.2 **Security.** Recognizing the importance of maintaining the security of the Service and of protecting Customer Confidential Information, Uptycs adheres to the security practices and policies found at <https://www.uptycs.com/security>.

7. LIMITED WARRANTY. Uptycs represents and warrants that the Service will substantially conform to the Documentation during the Warranty Period, which shall mean the Initial Term and any Renewal Term. If Customer notifies Uptycs in writing of a nonconformity of Service during the Warranty Period, Uptycs will, at its option and expense, (a) correct any nonconformities in the Service that cause the Service to fail to conform to the Documentation, or (b) provide to Customer a pro rata refund of any prepaid but unutilized Subscription Fees applicable to the non-conforming Service. The limited warranty set forth in this Section shall be void if the Service nonconformity is caused by (i) the use or operation of the Service with an application or in an environment other than that recommended in writing by Uptycs, (ii) modifications to or customizations of the Service without the express written authorization of Uptycs, (iii) accident, disaster or event of force majeure, (iv) misuse, fault or negligence of or by Customer, (v) use of the Service in a manner for which it was not designed, (vi) causes external to the Service such as, but not limited to, power failure or electrical power surges. THE WARRANTY AND REMEDIES SET FORTH IN THIS SECTION 7 REPRESENT UPTYCS’ SOLE WARRANTY AND CUSTOMER’S SOLE REMEDY IN THE EVENT OF BREACH OF WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, UPTYCS MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE

8. LIMITATION OF LIABILITY. THE CUMULATIVE LIABILITY OF UPTYCS TO CUSTOMER FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO UPTYCS UNDER THE APPLICABLE ORDER FORM WITHIN THE YEAR PRECEDING THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL UPTYCS OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR DAMAGES FOR LOSS OF DATA, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, EVEN IF UPTYCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IS NEGLIGENT.

9. INDEMNIFICATION. If a third party claims that the Service infringes any U.S. patent, copyright, or trade secret, Uptycs will defend Customer against such claim at Uptycs’ expense and pay all damages finally awarded through judgment or settlement, provided that Customer promptly notifies Uptycs in writing of the claim, allows Uptycs sole control of the defense and/or settlement, and cooperates with Uptycs in, the defense or settlement of such action. If such

a claim is made or appears possible, Uptycs may, at its option, secure for Customer the right to continue to use the Service, modify or replace the Service so that it is non-infringing, or, if neither of the foregoing options is available in Uptycs' reasonable opinion, terminate this Agreement and refund to Customer any unamortized pre-paid fees for use of the Service. Uptycs shall have no liability or obligation hereunder with respect to any infringement claim if such infringement is caused by (i) compliance with Customer's instructions, designs, guidelines, plans or specifications; (ii) Customer's use of the Service other than as specified in the applicable Documentation; (iii) modification of the Service by any person other than as authorized in writing by Uptycs; or (iv) the combination, operation or use of the Service with other product(s) or services not supplied by Uptycs, where the Subscription Service would not by itself be infringing. THIS PARAGRAPH STATES UPTYCS' ENTIRE OBLIGATION TO CUSTOMER WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

10. GENERAL.

10.1 Entire Agreement. This Agreement is the complete and exclusive statement of the parties' agreement and supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. If these Terms and Conditions conflict with any of the terms or conditions of any Order Form or Statement of Work, then, unless otherwise provided herein, the terms and conditions of such Order Form or Statement of Work will control solely with respect to the Services covered by such Order Form or Statement of Work. Any purchase orders issued by Customer shall be deemed to be for Customer's convenience only and, notwithstanding acceptance of such orders by Uptycs, shall in no way change, override, or supplement this Agreement.

10.2 Waiver. Any waiver or modification of the provisions of this Agreement will be effective only if in writing and signed by the party against whom it is to be enforced. If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A waiver of any provision, breach or default by either party or a party's delay exercising its rights shall not constitute a waiver of any other provision, breach or default.

10.3 Independent Contractor. Uptycs is an independent contractor and not an employee of Customer. At no time shall either party make any commitments or incur any charges or expenses for or in the name of the other party, or be considered the agent, partner, joint venturer, employer or employee of the other party.

10.4 Notices. All notices or other communications required to be given hereunder shall be in writing and delivered either by U.S. mail, certified, return receipt requested, postage prepaid; by overnight courier; or as otherwise requested by the receiving party, to the address first listed above. Notices shall be effective upon their receipt by the party to whom they are addressed.

10.5 Assignment. This Agreement may not be assigned by Customer without Uptycs' prior written consent.

10.6 Compliance with Laws. Each party will be responsible for compliance with all legal requirements related to its performance under this Agreement, including all applicable U.S. export laws and those laws related to the protection, privacy and disclosure of data and information.

10.7 Force Majeure. Neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, terrorism, war, riot, embargoes, fire, floods, earthquakes, or strikes (each a "Force Majeure Event") provided that such party gives prompt written notice to the other party of the Force Majeure Event. The time for performance will be extended for a period equal to the duration of the Force Majeure Event.

10.8 Governing Law and Disputes. This Agreement and any dispute arising hereunder shall be governed by and interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles, and shall be subject to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts, and each party consents to the exclusive personal jurisdiction and venue of such courts.

10.9 Non-Solicitation. Neither party shall directly or indirectly solicit, employ or engage any employee of the other party with whom the non-employing party came into contact through the performance of this Agreement during the period such employee was engaged in the performance of this Agreement and for one (1) year after such engagement. If any court or other adjudicatory body determines that the foregoing provision is unenforceable because of its duration or scope, the court or adjudicatory body has the power to reduce the duration or scope of the provision, as the case may be, so that in its reduced form the provision is enforceable. Such power includes the authority to reform the provision by rewriting it, if required, so that it conforms to applicable law and carries out the parties' intentions under this Agreement.

10.10 Survival. The following provisions of this Agreement shall survive any termination or expiration hereof: Sections 3, 4 and 6 through 10.

Appendix 2 – SUBSCRIPTION SUPPORT AND SERVICE LEVEL POLICY

SUPPORT

Uptycs support consists of Preventive Support and Error Correction during normal business hours specified as follows:

Preventive Support. Uptycs will undertake reasonable efforts to prevent any failure of the Services to function in conformance with the documentation. These efforts include, as appropriate and without limitation: (i) advising Customer of all pertinent problems encountered by other Services users; (ii) performing the remedial work required to prevent problems encountered by other Services users from affecting Customer’s use of the Services; (iii) proactively remedying any security flaws; and (iv) reviewing data provided by Customer on the Services operation to ascertain potential problems.

Error Correction. Uptycs will undertake efforts necessary to promptly correct any Defect. Customer may report a Defect via email or phone using the following information:

- Email: support@uptycs.com
- Phone: +1- 781-790-8972

Defects are classified by Customer according to the following definitions:

Severity Level	Description
1 - Critical Error	Defect that causes the Software Service to be unusable.
2 - Significant Error	Defect that has a material impact on Customer’s ability to use the Software Service.
3 - Other Error	Defect that is not a Critical Error or a Significant Error.

Uptycs will make reasonable efforts to correct the Defect or provide an acceptable work-around or action plan based on the severity of the Defect as follows:

Severity Level	Action
1 - Critical Error	Uptycs shall (a) provide an initial response within four hours; (b) initiate management escalation immediately; (c) provide Customer with a status update if Uptycs cannot resolve the Defect within four hours. ^[1] _[SEP]
2 - Significant Error	Uptycs shall (a) provide an initial response within eight hours; (b) initiate management escalation within 16 hours; (c) provide Customer with a status update within 24 hours. ^[1] _[SEP]
3 - Other Error	Uptycs shall (a) provide an initial response within 48 hours; (b) initiate management escalation within five business days; (c) provide Customer with a status update within 72 hours. ^[1] _[SEP]

Appendix 3 – STATEMENT OF WORK