



## TERMS OF SERVICE UPLAND SOFTWARE

These Terms of Service, including each Schedule and attachment hereto (collectively, the “**TOS**”), is between Customer (as identified in a Sales Order made subject to this TOS) and Upland Software and its Affiliates (“**Upland**”), and sets forth the general terms and conditions applicable to the Applications and Services provided by Upland to Customer. The details of Customer’s purchase of specific Applications and/or Services shall be set forth in a Sales Order referencing this TOS, and upon execution by the parties, each such Sales Order shall be made subject to this TOS (each Sales Order together this TOS, an “**Agreement**”). The Agreement is effective as of the date the first such Sales Order incorporating this TOS is mutually agreed upon and executed (the “**Effective Date**”). By agreeing to a Sales Order made subject to this TOS, Customer and Upland agree to be bound by the terms of the Agreement.

### TERMS AND CONDITIONS

#### 1. DEFINITIONS

1.1. “**Affiliate**” means any person or entity that controls, is controlled by, or is under common control with a party to this TOS. The term “control” as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidences of ownership of an entity. Where identified in a Sales Order made subject to this TOS, Upland’s “Affiliates” shall mean: (1) Upland Software Inc. (*Logiciels Upland*), a corporation registered in Canada, (2) Upland Software UK Limited, a limited company registered in the United Kingdom, and (3) any other wholly-owned subsidiary of Upland Software, Inc., a Delaware corporation. Additional terms regarding each party’s Affiliates are detailed in Section 13.2 (*Affiliates*), below.

1.2. “**Agreement Term**” has the meaning set forth in Section 5.1, below.

1.3. “**Application**” means any software program, platform, solution suite supplied by Upland and identified in the applicable Sales Order. Where so indicated in the applicable Schedule, “Application” includes Upland Content and other information, technology, methods, processes, specifications, solutions, utilities, graphics and data made available by Upland to Customer on a per-User basis pursuant to the Agreement.

1.4. “**Channel Partner**” means an entity that Upland has authorized as a distributor of Upland’s Services.

1.5. “**Channel Partner Sale Agreement**” means the written order, agreement or other document between Customer and a Channel Partner for Customer’s purchase of Services. Terms that apply to Customer’s use of the Services when purchased from a Channel Partner are specified in Section 4.1.

1.6. “**Customer Data**” means the data, information or other content, in any form, that is loaded into an Application by or on behalf of Customer, its Affiliates and/or any Users (or generated by the Application based on such information, data or content) for storage in Customer’s Instance. For the avoidance of doubt, Customer Data includes, without limitation, the following: (a) all data that is the output of Processing; (b) any copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, or otherwise derived from any Customer Data; (c) any Personal Data forming part of the Customer Data; and (d) any Customer Data generated or supplied by Customer’s subscribers, customers, or partners.

1.7. “**Documentation**” means documentation provided by Upland which describes the principles of the operation or functionality of the applicable Application, including, but not limited to, any such files that are embedded within such Application (e.g., help files).

1.8. “**Enhanced Support Services**” has the meaning set forth in the applicable Schedule.

1.9. “**Entitlements**” means the license or usage metrics and other restrictions or scope limitations applicable to Customer’s rights to any Application or Services, as detailed in this TOS and the applicable Sales Order (e.g., numbers of Users, volume of messages, the Subscription Term, etc.).

1.10. “**Intellectual Property Rights**” means all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in Confidential Information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

1.11. “**Instance**” means any database provided by Upland in connection with the Services for Customer to store and manage the Customer Data.

1.12. “**Personal Data**” means any information relating to an identified or identifiable natural person.

1.13. “**Process**” or “**Processing**” means any operation or set of operations which is performed on Customer Data or on sets of Customer Data, whether or not by automated 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.

1.14. “**Professional Services**” means consulting and support services provided by Upland, or its agents, including, but not limited to, software implementation, training, configuration, data migration, consulting and professional services performed by or on behalf of Upland for Customer subject to the terms this TOS and as detailed in a Sales Order.

1.15. “**Sales Order**” means any mutually agreed, written sales order, statement of work or similar document referencing and made subject to this TOS, executed on behalf of Upland and Customer (or, in the case of Customer’s purchase of Services under a Channel Partner Sale Agreement, the order for Services executed between Customer and the Channel Partner), including its exhibits and addenda, detailing the Services, fees, and any special terms for using the Services that Customer has ordered. Each Sales Order becomes effective when executed by both Upland and Customer and is made subject to this TOS as detailed in the preamble, above.

1.16. “**Schedule**” means the document attached hereto and identified as a “Schedule” which supplements this TOS and sets



forth additional terms and conditions specific to the particular Application(s) or other Services to be provided by Upland. Such additional terms and conditions are incorporated into this TOS as if such terms were fully set forth herein.

1.17. **"Services"** means Upland's provision of any Application, Subscription Services, Support Services and/or Professional Services, collectively.

1.18. **"Statement of Work" or "SOW"** means a Sales Order for purchases of Professional Services, as may be executed by the parties from time to time.

1.19. **"Subscription Fees"** means any fees relating to Subscription Services (including fees for exceeding the Entitlements).

1.20. **"Subscription Services"** means the Services offerings to which Customer subscribes during a Subscription Term, otherwise subject to the Entitlements.

1.21. **"Subscription Start Date"** means, with respect to each Sales Order, the later to occur of the "Subscription Start Date" specified in the Sales Order, or the date on which the last of Upland and Customer (or, if applicable, a Channel Partner) executes the Sales Order. For renewing Subscription Terms, the Subscription Start Date will be the day immediately following the date on which the preceding term expired, unless otherwise specified in the Sales Order.

1.22. **"Subscription Term"** means the period of time in which Customer has the right to use or receive Subscription Services as detailed in the applicable Sales Order.

1.23. **"Support Services"** means availability, ongoing maintenance and technical support services provided by Upland for the applicable Application or Service in accordance with the maintenance and support terms detailed in the applicable Schedule.

1.24. **"Users"** means individuals authorized by Customer to use the applicable Application or Services subject to the Entitlements and who have been supplied Upland-issued user identifications and passwords by Customer. "Users" may include, but is not limited to, Customer's, and any Customer's Affiliate's, employees, consultants, contractors and agents.

1.25. **"Virus"** means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, corrupt, destroy, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user. This definition includes, without limitation, self-propagating programming instructions commonly called viruses, trojans or worms. This definition expressly excludes code contained within any Application which: (i) is authored by Upland; and (ii) functions to deactivate a User's ability to access and/or use the Application upon the expiration, suspension or termination of a Subscription Term.

## **2. OWNERSHIP**

2.1. **The Services.** Except for the rights and licenses provided hereunder, as between Upland and Customer, Upland and its licensors retain all right, title, and interest to: (i) all software, products, works, and other intellectual property created, used, or provided by Upland for the purposes of the Agreement, including, but not limited to, each Application, the Services and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, the Services and all Documentation. Customer shall and hereby makes all assignments necessary to provide Upland such ownership rights. Customer's sole right to the Services is as set forth in the Agreement.

2.2. **Customer Data.** All rights, title and interest in and to Customer Data are and shall remain the property of Customer. Customer understands that certain of Upland's Applications will not function absent Customer Data, and as such, Customer shall provide Upland, in the form and format and on the schedule specified by Upland, Customer Data and other information reasonably required for Upland's performance of its obligations under the Agreement. Subject to the terms of the Agreement, Customer hereby grants to Upland throughout the term of the Agreement (and after the term solely as reasonably necessary for the performance of Upland's post-termination obligations to Customer) the rights to use, reproduce, store, distribute, modify, cache, and transmit Customer Data via the applicable Application solely to the extent necessary for Upland to provide the Services or otherwise perform its obligations under the Agreement.

2.3. **Improvements Feedback.** If Customer provides any feedback to Upland concerning the functionality and performance of any Application or Services (including identifying potential errors and improvements) (the **"Improvement Feedback"**), Customer hereby assigns to Upland all right, title, and interest in and to such Improvement Feedback, and Upland is free to use that Improvement Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Services. Improvement Feedback expressly excludes Customer Data. Additionally, Upland may use Customer's and its Users' Services usage history, statistics and telemetry (**"Enhancement Data"**) solely for Upland's internal analytical purposes related to its provision of Services, including to improve and enhance the Services. Upland may make information derived from its analysis of Enhancement Data available to its service providers on an aggregated and anonymized basis, provided that such information does not contain any Personal Data. For the sake of clarity, aggregated and anonymized data is not Confidential Information of Customer.

## **3. PROFESSIONAL SERVICES**

3.1. **Scope.** For an additional fee, Customer may elect to purchase Professional Services, which may include, with respect to the Application, training, customization, on-site support and maintenance, and/or consulting services. For each request for Professional Services hereunder, the parties may execute a Sales Order specifying the fees, scope of work and/or specific terms of the project(s) or Professional Services to be provided.

3.2. **Travel Expenses.** Any travel related expenses incurred in the provision of Services must be pre-approved by Customer (**"Travel Expenses"**). Travel Expenses, including, but not limited to, transportation, lodging and meal expenses will be reimbursed by Customer and are in addition to the specified Services fees. If Customer cancels or reschedules a visit less than seven (7) days prior to the scheduled visit, Customer shall pay all of Upland's travel (such as hotel, flight) cancellation and change fees related to such visit. Upland, in its sole discretion, may waive some or all of such cancellation or rescheduling fees.

## **4. PAYMENT AND FEES**

4.1. **Purchases Through Channel Partners.** This Section 4.1 only applies to Customers purchasing Services through a Channel Partner. If Customer is uncertain as to the applicability of this section to its purchase of Services, Customer should contact Upland for further information.

4.1.1. **Channel Partners.** If Customer purchased the Services from a Channel Partner, then this Agreement is not exclusive of any rights or obligations Customer obtains or is bound to under the Channel Partner Sale Agreement; however, if there is any conflict between the provisions of this Agreement and the Channel Partner Sale Agreement, then the provisions of this Agreement



prevail. If a Channel Partner has granted Customer any rights that Upland does not also expressly grant to Customer in this Agreement, or that conflict with any term of this Agreement, then Customer's sole and exclusive recourse with respect to such conflicting rights is against the Channel Partner.

4.1.2. Term and Renewal. If Customer ordered the Services through a Channel Partner, then Section 5.2 is inapplicable, and the Subscription Term will begin on the Subscription Start Date and, subject to the remainder of Section 5, it will expire, renew and terminate in accordance with the terms of the Channel Partner Sale Agreement.

4.1.3. Fees and Payment. If Customer ordered the Services through a Channel Partner, then the remaining provisions of this Section 4, below (*i.e.*, Sections 4.2 through 4.7, inclusive), do not apply to Customer, and Customer's billing and payment rights and obligations are governed by the Channel Partner Sale Agreement. However, if the Channel Partner from whom Customer purchased the Services fails to pay Upland in a timely manner for any amounts due in connection with Customer's use of the Services, then Upland may in its sole discretion suspend Customer's rights to use the Services without liability, upon notice to Customer. Customer agrees that Customer's exclusive remedy in the event of such suspension is solely against the Channel Partner.

4.2. Sales Orders; Fees. Customer shall pay Upland the fees specified in the applicable Sales Order, taxes, and any other amounts owing under the Agreement in the currency specified in the applicable Sales Order. Except as otherwise expressly provided in this TOS or the applicable Sales Order, all amounts payable to Upland under the Agreement are: (i) subject to the Entitlements; and (ii) non-cancellable and non-refundable. With regard to Subscription Services, Customer shall not be entitled to any refund of fees paid or relief from fees due if the volume of Entitlements actually used by Customer is less than the Entitlements purchased, and Customer may not carry over any of the unused Entitlements to a subsequent Subscription Term. Fees for Professional Services paid by Customer to Upland and remaining unused at the end of twelve (12) months from the date such Professional Services are invoiced shall expire and be retained by Upland.

4.3. Modifications to Entitlements. Customer may, from time to time during the Agreement Term elect to purchase rights to exceed some or all of the Entitlements (*e.g.*, increases to the number of Users, purchases of additional messaging volume, *etc.*) by providing Upland with a purchase order issued against and referencing the then-current Sales Order, or, upon Upland's request, by entering into a supplemental Sales Order with Upland; provided, however, that Customer acknowledges that certain Applications may not allow an increase of some or all elements of the Entitlements.

4.4. Invoices and Payment Terms. Subject to Section 4.4 (*Disputed Invoices*), Customer shall pay all amounts due within thirty (30) days of the date of the applicable invoice. Unless otherwise specified in a Sales Order, fees for Services shall be invoiced annually and in advance. Further, Customer acknowledges and agrees that fees for renewals of Subscription Services are due on the first day of the renewing Subscription Term and shall be invoiced in advance as set forth above. Fees for additional Services or modifications to the Entitlements shall be invoiced upon Upland's receipt of Customer's request for such purchase. Subject to Section 4.2 (*Modifications to Entitlements*), where modifications to Entitlements to Subscription Services are purchased by Customer during an active Subscription Term, such

fees shall be pro-rated for the remainder of such Subscription Term. Customer may provide Upland with a purchase order number or contract control number ("**Order Number**") for invoicing for Services purchased under the Agreement. Where Customer provides such Order Number, Upland agrees that it will provide the Order Number on each invoice and that no invoice will be considered validly submitted under this Agreement without such Order Number. Whenever a purchase order is issued by Customer as provided herein, the parties agree that any such issuance is for convenience of the Customer and the terms and conditions of any such purchase orders, if any, are superseded by this TOS.

4.5. Disputed Invoices. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Upland in writing of its objection within twenty (20) days from the date of the applicable invoice, providing a detailed description of the reasons for the objection, and shall pay the portion of the invoice, if any, which is not in dispute. If Customer does not object in a timely manner, the amount invoiced shall be conclusively deemed correct by the parties.

4.6. Late Payments. Upland shall notify Customer in writing, which may be by email, of any undisputed invoice which is thirty (30) or more days past due. In the event Customer has not promptly cured such default, then Upland may, on not less than five (5) business days' prior written notice to Customer, in its sole discretion, and without prejudice to its other rights following material breach and failure to cure, until such breach has been cured in full, suspend performance of some or all of Upland's obligations to provide Services under the Agreement. In the event of Customer's default in the payment of any undisputed invoice(s) for a period in excess of sixty (60) days past due, Upland may, upon not less than ten (10) business days' prior written notice to Customer, declare the entire principal sum payable under the Agreement immediately due and payable. Further, Customer shall reimburse any costs or expenses (including, but not limited to, collection agency fees, reasonable legal fees and court costs) incurred by Upland to collect any undisputed amount past due. Amounts due to either party under the Agreement may not be withheld or offset by either party for any reason.

4.7. Taxes. Customer shall be responsible for any applicable sales, value-added, use and similar taxes, together with all customs and import duties, and similar levies and impositions ("**Taxes**") payable with respect to its acquisition of Services, or otherwise arising out of or in connection with the Agreement, other than taxes based upon Upland's personal property ownership or net income. Unless expressly specified otherwise in any Sales Order, all fees, rates and estimates exclude Taxes. If Customer has tax-exempt status, Customer shall provide written evidence of such status with its Sales Order(s) or upon request by Upland.

## 5. TERM, RENEWAL AND TERMINATION

5.1. Agreement Term. This TOS shall commence upon the Effective Date and continue until each Sales Order has expired or is otherwise terminated in accordance with the Agreement (the "**Agreement Term**").

5.2. Subscription Term. Where Customer elects to purchase Subscription Services, the Subscription Term for such Subscription Services shall commence on the subscription start date specified in the applicable Sales Order and shall continue for the period(s) specified therein. In the event such start date or period is not specified in the Sales Order, the Subscription Term shall be one (1) year from the date of execution of such Sales Order.

5.3. Termination for Breach. In the event of a material breach of the Agreement by either party, the non-breaching party may elect to terminate the Agreement, any Sales Order (or portion





thereof) affected by the breach by giving the breaching party written notice of the breach and the non-breaching party's intention to terminate. If the breach has not been cured within the period ending thirty (30) days after such notice, and if the non-breaching party provides written notice of termination to the breaching party ("**Termination Notice**"), then the Agreement, or any such Sales Order, shall terminate within the time period specified in the Termination Notice. If Customer terminates the Agreement or any Sales Order for breach in accordance with this Section 5.3, then Upland shall refund to Customer a pro-rata amount of any affected Subscription Services fees prepaid to Upland and applicable to the unutilized portion of the Agreement Term for the terminated Agreement, and any affected unutilized Professional Services fees prepaid to Upland. For the avoidance of doubt, Customer's failure to pay any overdue, undisputed fees within thirty (30) days of Upland notifying Customer of the overdue payment shall constitute a material breach of the Agreement.

5.4. Termination for Convenience. The parties acknowledge and agree that Subscription Services are priced based on upon minimum commitments throughout the applicable Subscription Term and, notwithstanding anything to the contrary in the Agreement, may not be terminated for the convenience of either party.

5.5. Suspension for Critical Threats. If Upland, acting reasonably in the circumstances then known to Upland, determines that Customer's or any of its Users' use of the Services poses an imminent threat to: (i) the security or integrity of any Customer Data or the data of any other Upland customer; or (ii) the availability of the Application to Customer or any other Upland customer (each, a "**Critical Threat**"), then Upland shall immediately notify Customer in writing, which may be by email. Upland may suspend Customer's and its Users' use of the Application until the Critical Threat is resolved. Upland shall cooperate with Customer to promptly restore access to the Services once it verifies that Customer has resolved the condition giving rise to the suspension.

5.6. Transition Assistance. Following the termination or expiration of a Sales Order, provided Customer makes a written request within fourteen (14) days prior to the date of termination or expiration, subject to the then-current Professional Services fees on a time and materials basis, Upland shall offer transition assistance (which may include, to the extent practicable, an export of Customer Data from the applicable Application or Instance). To the extent Upland makes available to Customer an API or other means to assist with such transition, the API shall be Upland's Confidential Information (as defined in Section 6.1, below), and Customer is granted a personal, non-sublicensable, non-exclusive, non-transferable, limited license to use the API solely for Customer's internal use for exporting Customer's content from Upland to the new Customer system. Customer shall not (a) copy, rent, sell, disassemble, reverse engineer or decompile (except to the limited extent expressly authorised by applicable statutory law), modify or alter any part of the API, or (b) otherwise use the API on behalf of any third party. The API license shall automatically terminate in the event Customer breaches this Section 5.6 or immediately upon notice from Upland.

5.7. Survival. Sections 2 (Ownership), 4.1 (Fees), 4.3 (Invoices and Payment Terms), 4.5 (Late Payments), 4.6 (Taxes), 5.6 (Transition Assistance), 5.7 (Survival), 6 (Confidentiality), 8.5 (Bugs and Abatement; Scope), 8.6 (Disclaimer of Implied Warranties), 9 (Indemnification), 10 (Limitations and Exclusions of Liability), 11 (Dispute Resolution), 12 (Publicity) and 13 (General) shall survive the termination or expiration of the Agreement.

## 6. CONFIDENTIAL INFORMATION

6.1. Restrictions on Use and Disclosure. Neither Upland nor Customer shall disclose to any third party any information

provided by the other party pursuant to or in connection with the Agreement that the disclosing party identifies as being proprietary or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential (such information, "**Confidential Information**"), and shall make no use of such Confidential Information, except under and in accordance with the Agreement. The receiving party shall take reasonable precautions (using no less than a reasonable standard of care) to protect the disclosing party's Confidential Information from unauthorized access or use. Each party may disclose Confidential Information to its Affiliates and service providers, and its Affiliates and service providers may use such information, in each case solely for purposes of the Agreement. Each party shall be liable for any breach of its obligations under this Section 6 that is caused by an act, error or omission of any such Affiliate or service provider. Confidential Information includes information disclosed by the disclosing party with permission from a third party, and combinations of or with publicly known information where the nature of the combination is not publicly known. Upland's Confidential Information includes information regarding Application, Upland's processes, methods, techniques and know-how relating to identity management, user authentication or user authorization, Documentation, product roadmaps, pricing, marketing and business plans, financial information, information security information, Upland's certifications, and Personal Data of Upland personnel. Customer's Confidential Information includes its proprietary workflows and processes, systems architecture, marketing and business plans, financial information, information security information, information pertaining to Customer's other suppliers, and Personal Data of Customer's personnel. This Section 6 does not apply to Upland's obligations regarding use and protection of Customer Data; those obligations are specified in Section 7 (*Data Protection*).

6.2. Exclusions. Except with respect to Personal Data, Confidential Information does not include information that the receiving party can establish: (i) has entered the public domain without the receiving party's breach of any obligation owed to the disclosing party; (ii) has been rightfully received by the receiving party from a third party without confidentiality restrictions; (iii) is known to the receiving party without any restriction as to use or disclosure prior to first receipt by the receiving party from the disclosing party; or (iv) has been independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

6.3. Disclosure Required by Law. If any applicable law, regulation or judicial or administrative order requires the receiving party to disclose any of the disclosing party's Confidential Information (a "**Disclosure Order**") then, unless otherwise required by the Disclosure Order, the receiving party shall promptly notify the disclosing party in writing prior to making any such disclosure, in order to facilitate the disclosing party's efforts to protect its Confidential Information. Following such notification, the receiving party shall cooperate with the disclosing party, at the disclosing party's reasonable expense, in seeking and obtaining protection for the disclosing party's Confidential Information.

6.4. Independent Development. The terms of confidentiality under the Agreement shall not limit either party's right to independently develop or acquire products, software or services without use of or reference to the other party's Confidential Information.

6.5. Return or Destruction. Following any termination or expiration of the Agreement or any Sales Order, each party shall: (i) immediately cease use of any Confidential Information of the other communicated for the purposes of the Agreement or such Sales Order, and (ii) within thirty (30) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) all copies of any Confidential Information of the other party



disclosed under the Agreement, subject to each party's customary backup and archival processes.

## 7. DATA PROTECTION

7.1. Regulatory and Compliance Matters. In respect of Personal Data provided to Upland by Customer in connection with the Agreement, Upland shall comply, and shall ensure that its personnel comply, with the requirements of state, federal and national privacy laws and regulations governing such Personal Data in Upland's possession or under its control and applicable to Upland's provision of Services. Customer is solely responsible for ensuring Customer's, and its Users', compliance with any legal, regulatory or similar restrictions applicable to the types of data Customer elects to Process with the Application.

7.2. Regulator Inquiries and Court Orders. If any regulator, or any subpoena, warrant or other court or administrative order, requires Upland to disclose or provide Customer Data to a regulator or to any third party, or to respond to inquiries concerning the Processing of Customer Data, Upland shall promptly notify Customer, unless prohibited by applicable law. Following such notification, Upland shall reasonably cooperate with Customer in its response, except to the extent otherwise required by applicable law.

7.3. Audits and Security Assessments. Upland shall maintain compliance with industry standards and applicable governing frameworks such as Statement on Standards for Attestation Engagements (SSAE) and The International Organization for Standardization (ISO) (e.g., SSAE 16, ISO 27001 and ISO 27018) throughout the Agreement Term. Upland shall make available to Customer, annually and upon request, all information necessary to demonstrate compliance with its obligations. Upland shall allow for and contribute to audits conducted by Customer, or third-party auditor mandated by Customer, under the following parameters: (i) the Customer may elect to conduct an audit not more than once within any 12-month period at no cost to Customer. Any additional audits within the same 12-month period shall be subject to a reasonable fee; (ii) third-party auditors mandated by Customer shall enter into confidentiality agreements with Upland that are no less restrictive than those set out in this TOS; (iii) Customer provides reasonable prior notice of such request for an audit; (iv) Customer ensures such audit shall not be unreasonably disruptive to Upland's business; and (v) neither Customers nor its auditors shall be permitted to make unaccompanied site visits or to logically access Upland's IT systems.

7.4. Data Security. Upland shall implement and maintain commercially reasonable technical and organizational security measures designed to meet the following objectives: (i) ensure the security and confidentiality of Customer Data in the custody of and processed by Upland; (ii) protect against any anticipated threats or hazards to the security or integrity of such Customer Data; (iii) protect against unauthorized access to or use of such Customer Data; and (iv) ensure that Upland's return or disposal of such Customer Data is performed in a manner consistent with Upland's obligations under items (i)-(iii).

7.5. Breach Notification. Upland shall notify Customer, without undue delay, of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data in Upland's possession or under its control (a "Data Breach"). Each party shall reasonably cooperate with the other with respect to the investigation and resolution of any Data Breach including, in the case of Upland, prompt provision of the following, to the extent then known to Upland: (i) the possible cause and consequences of the Data Breach; (ii) the categories of Customer Data involved; (iii) a summary of the possible consequences for the relevant Users; (iv) a summary of the unauthorized recipients of the Customer Data; and (v) the

measures taken by Upland to mitigate any damage. Upon confirmation of any vulnerability or breach of Upland's security affecting Customer Data in Upland's custody and control, Upland shall modify its processes and security program, as necessary, to mitigate the effects of the vulnerability or breach upon such Customer Data.

7.6. Personal Data Collection, Processing and Transfer. Customer is solely responsible for obtaining, and represents and covenants that it has obtained or will obtain, prior to Processing by Upland, all necessary consents, licenses and approvals for the Processing, or otherwise has a valid legal basis for the Processing of, any Personal Data provided by Customer or its Users in connection with the Services. Customer may select the Personal Data it elects to input into and Process using the Application in its sole discretion; Upland has no control over the nature, scope, or origin of, or the means by which Customer acquires Personal Data Processed by the Application. If any User requests Upland to provide them with information relating to Processing of their Personal Data, or to make changes to their Personal Data, Upland shall promptly notify Customer of the request, unless otherwise required by applicable law. Customer may make changes to User data using the features and functionality of the Application. Upland shall not make changes to User data except as agreed in writing with Customer. Upland shall Process Customer Personal Data only as necessary to provide the Services, and in accordance with Customer's written instructions. This Agreement, and Customer's use of the Application's features and functionality, are Customer's instructions to Upland in relation to the Processing of Customer Personal Data. With respect to Personal Data that is transferred from the European Economic Area to the United States, Upland represents that Upland is certified under the EU-US Privacy Shield Framework and warrants that it shall maintain such certification and abide by its principles during the currency of the program or the Agreement Term, whichever is shorter.

7.7. Data Retention, Export and Deletion. Customer is solely responsible for its data retention obligations with respect to Customer Data. Customer may export Customer Data from the Application at any time during the Agreement Term, using the Application's then existing features and functionality, at no additional charge. Upland's obligations to return Customer Data upon termination of the Agreement may be fulfilled by permitting Customer to export Customer Data as specified above. Customer may delete Customer Data on its Instances at any time. Upland shall delete Customer's Instances (and any data remaining on such Instances) upon termination or expiration of the Agreement.

7.8. Sub-Processors. Customer consents to Upland's use of sub-Processors to provide aspects of the Services, and to Upland's disclosure and provision of Customer Personal Data to those sub-Processors. Upland shall be responsible for the performance of its sub-Processors. Upland shall ensure sub-Processors are subject to contractual obligations which are the same as or equivalent to those imposed on Upland with regard to Processing of Customer Personal Data. Upland maintains a list of its sub-Processors on its company website under the Privacy page. Upland shall inform the Customer of any intended changes concerning the addition or replacement of any sub-Processor within a reasonable time prior to implementation of such change. In the event of the Customer objecting to such change, Upland shall make reasonable efforts to address the Customer's concerns (including making reasonable efforts to find an alternative sub-Processor).

## 8. WARRANTIES

8.1. Mutual Warranties. Each party represents and warrants to the other that:

8.1.1. the Agreement has been duly executed and delivered and constitutes a valid and binding agreement



enforceable against such party in accordance with its terms;

8.1.2. no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of the Agreement; and

8.1.3. it shall comply with all applicable laws in connection with the performance of its obligations arising hereunder.

8.2. Upland Additional Warranties.

8.3. Upland represents and warrants to Customer that:

8.3.1. *Non-Infringement.* The Services, in the form and manner provided by Upland to Customer, shall not infringe, violate, or misappropriate the Intellectual Property Rights of any third party. Upland warrants that it has and shall maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the Agreement;

8.3.2. *Performance Warranty.* During any active Subscription Term (or such other period to which the parties may agree as detailed in a Sales Order), the Application, in the form provided by Upland, shall conform in all material respects to its applicable specifications set forth in the Documentation;

8.3.3. *Viruses.* Upland shall use commercially reasonable efforts, using applicable current industry practices, to ensure that the Application, in the form provided by Upland to Customer under the Agreement, contains no Virus, or other similar malicious code;

8.3.4. *Professional Services.* Upland shall provide the Professional Services by qualified individuals in a good, professional and workmanlike manner, consistent with applicable industry standards; and

8.3.5. *Compliance with Law.* The Services, in the form provided or made available to Customer by Upland, shall comply with all laws applicable to Upland and its provision of Services.

8.4. Performance Remedy. Subject to Upland's Support Services obligations detailed in the applicable Schedule, if the Application fails to conform to the warranty set forth in Section 8.3.2 and Customer provides written notice of the non-conformance to Upland, then, as Customer's exclusive remedy and Upland's sole obligation: Upland shall either repair or, at its option, replace the non-conforming Application or, if Upland is unable to correct the non-conformance within thirty (30) days of receipt of such written notice from Customer, Customer may terminate the applicable Services, and Upland shall refund to Customer a pro-rata amount of any Services fees prepaid to Upland and applicable to the unutilized portion of the Subscription Term for the terminated Services.

8.5. Bugs and Abatement; Scope. Without limiting the express warranties in this Section 8 or any express warranties specified elsewhere in the Agreement, Upland does not warrant: (i) that the Application or Services are completely free from all bugs, errors, or omissions, or will ensure complete security; (ii) that the Customer's use of the Services will be uninterrupted or error-free; or (iii) that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements. Upland shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's or public communications networks and facilities, including the internet, and the Customer acknowledges that the Services and may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The warranties in the

Agreement are for the sole benefit of Customer and may not be extended to any other person or entity.

8.6. Disclaimer of Implied Warranties. Neither party makes any representation or warranty in connection with the Services, except as expressly warranted in the Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SPECIFICALLY WARRANTED IN THIS SECTION 8, EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR IMPLIED OBLIGATION TO INDEMNIFY FOR INFRINGEMENT, ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AND ANY STATUTORY REMEDY.

## 9. INDEMNIFICATION

9.1. Infringement Indemnification. Upland shall defend, indemnify, save and hold harmless Customer and its officers, agents and employees, against any costs, expenses, damages finally awarded and reasonable attorneys' fees incurred in connection with any claim, demand, suit, or proceeding made or brought by a third party (a "**Third-Party Claim**") against Customer alleging that the use of any Application or Service as permitted in the Agreement infringes or misappropriates the Intellectual Property Rights of a third party.

9.2. Exclusions from Obligations. Upland shall have no obligation under Section 9.1 (*Indemnification by Upland*) for any infringement or misappropriation to the extent that it arises out of or is based upon: (a) use of an Application or Service in combination with other products or services not provided by, or authorized in writing by, Upland if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application or Service by Customer in violation of the terms of the Agreement; (c) Customer's failure to use an Application or Service in accordance with the Documentation (or other written instructions) provided by Upland, if the infringement or misappropriation would not have occurred but for such failure; or (d) any modification of an Application or Service not made by or authorized in writing by, Upland where such infringement or misappropriation would not have occurred absent such modification.

9.3. Mitigation of Infringement Action. If Customer's use of any Application or Service is, or in Upland's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 9.1 (*Infringement Indemnification*) then Upland shall either: (a) procure the continuing right of Customer to use the Application or Service; (b) replace or modify the Application or Service in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Upland is unable to do either (a) or (b), Upland shall (c) terminate the Agreement and refund to Customer the pro-rata amount of any fees prepaid to Upland which are applicable to the unutilized or undelivered portions of the Subscription Services and/or Professional Services.

9.4. Limited Remedy. This Section 9 states Upland's sole and exclusive liability, and Customer's sole and exclusive remedy, for Upland's actual or alleged breach of Section 8.3.1 (Non-Infringement), and any other actual or alleged infringement or misappropriation of third-party Intellectual Property Rights by any Application or Service.

9.5. Indemnification by Customer. Customer shall defend save and hold harmless Upland against any Third-Party Claim made or brought against Upland by a third party alleging that Customer Data or Customer's use of the Services in violation of this TOS, infringes or misappropriates the intellectual property rights of a





third party or violates applicable law, and shall indemnify Upland for any damages finally awarded against, and for reasonable attorney's fees incurred by, Upland in connection with any such Third-Party Claim.

9.6. Relief from Obligations. An indemnifying party's obligations arising under this Section 9 are expressly conditioned upon the indemnified party: (a) promptly gives the indemnifying party written notice of the Third-Party Claim; (b) providing the indemnifying party sole control of the defense and settlement of the Third-Party Claim (provided that indemnifying party may not settle any Third-Party Claim unless the settlement unconditionally releases the indemnified party of all liability); and (c) provides to indemnifying party all reasonable assistance, at indemnifying party's expense. Further, an indemnifying party shall be relieved of its responsibilities under this Section 9 for any Third-Party Claims arising solely from the actions or omissions of indemnified party, its officers, employees or agents.

9.7. Classification of Amounts. Any amounts payable by an indemnified party to a third party pursuant to a judgment, liability for which falls within the indemnifying party's indemnification obligations under the Agreement, shall be deemed direct damages.

9.8. Contributory Negligence. If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the parties gives rise to damages for which either party is entitled to indemnification under this TOS, then such damages shall be allocated between the parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such damages and such indemnification shall be adjusted accordingly.

## 10. LIMITATIONS AND EXCLUSIONS OF LIABILITY

10.1. Exclusion of Certain Claims. SUBJECT TO SECTION 10.3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF (i) THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT OR ANY RELATED AGREEMENT, OR ANY SOFTWARE, PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR (ii) ANY CLAIM, CAUSE OF ACTION, BREACH OF CONTRACT OR ANY EXPRESS OR IMPLIED WARRANTY, UNDER THIS AGREEMENT, ANY RELATED AGREEMENT OR OTHERWISE, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

10.2. Limitation of Liability. Subject to Section 10.3, neither party's maximum aggregate liability arising out of the Agreement or any related agreement shall in any event exceed the fees paid to Upland under the Sales Order giving rise to the claim during the twelve-month (12-month) period immediately preceding the aggrieved party's first assertion of any claim against the other, regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

### 10.3. Exceptions.

10.3.1. Sections 10.1 and 10.2 do not apply to either party's (i) willful misconduct or gross negligence, (ii) infringement or misappropriation of any of the other party's Intellectual Property Rights, (iii) personal injury (including death) or damage to real or tangible property caused by either party's negligent act or omission, (iv) liability or loss which may not be limited by applicable law.

10.3.2. Section 10.2 does not apply to (i) each party's defense and indemnification obligations, (ii) Customer's obligations to pay fees and expenses when due and payable under the Agreement, nor (iii) either party's obligations under Section 6 (Confidential Information) and/or Section 7 (Data Protection), provided, however, that except to the extent of willful misconduct or gross negligence of Upland, Upland's maximum aggregate liability under Section 7 shall not exceed three times (3X) the fees paid by Customer to Upland under the affected Sales Order in the twelve-month (12 month) period immediately preceding Customer's first assertion of its claim.

10.4. General. Each party agrees that these exclusions and limitations apply even if the remedies are insufficient to cover all of the losses or damages of such party or fail of their essential purpose and that without these limitations the fees for the Services would be significantly higher. Neither party may commence any action or proceeding under the Agreement more than two years after the occurrence of the applicable cause of action.

## 11. DISPUTE RESOLUTION

11.1. Governing Law and Venue. This Agreement shall be governed by and interpreted in accordance with the internal laws of the states or countries specified in the table below, without regard to conflicts of laws principles. In the event of any controversy or claim arising out of or relating to the Agreement, or its breach or interpretation, the parties shall submit to the exclusive jurisdiction of and venue in the applicable courts specified in the table below. Each party waives all defenses of lack of personal jurisdiction and inconvenient forum.

If the Customer's address in the Sales Order is in:	The governing law is that of:	The courts having exclusive jurisdiction are:
The USA, Mexico, or any country in Central or South America or the Caribbean	Texas, USA, and controlling United States federal law	Courts located in Austin, Texas, USA
Canada	Ontario, Canada, and controlling Canadian federal law	Courts located in Toronto, Ontario, Canada
Any country in Europe, the Middle East, Africa, Asia or the Pacific Region	England and Wales	Courts located in London, England

11.2. Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of the Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of the Agreement, its reasonable attorneys' and other experts' (including without limitation accountants) fees and expenses.

## 12. PUBLICITY

Neither party shall use the other party's name, trademark, or logo without the other party's prior written permission in each case. Notwithstanding the foregoing, either party shall be permitted to



disclose any details regarding this relationship to the extent required by law.

### 13. GENERAL

13.1. Relationship. Upland shall be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of its obligations under the Agreement.

13.2. Affiliates. This TOS sets forth the general terms and conditions under which Upland will provide Services to Customer and its Affiliates. Sales Orders may be entered into under this TOS by Upland Software, Inc. or any Upland Affiliate (as identified in Section 1.1, above), and by either the entity designated above as "Customer" or any of Customer's Affiliates. In such event, the entity executing a Sales Order in the position of the Services provider shall be considered "Upland" and the Services recipient shall be considered "Customer" for all purposes of the resulting Agreement; and such Agreement shall be considered a two-party agreement between "Upland" and such "Customer".

13.3. Compliance with Laws. Each party shall comply with all laws and regulations applicable to it, including export control laws and embargoes. Neither party shall have any liability to the other for any non-performance of their obligations under the Agreement to the extent that the non-performance is mandated by applicable law. Each party represents and warrants to the other that neither it nor its Affiliates, nor any of its or their users, officers or directors, are persons, entities or organizations with whom the other party is prohibited from dealing (including provision of software, products or services) by virtue of any applicable law, regulation, or executive order.

13.4. U.S. Government Rights. To the extent applicable, Upland provides the Services for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in the Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Upland to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

13.5. Equitable Relief. Each of Customer and Upland acknowledges that damages may be an inadequate remedy if the other violates the terms of the Agreement pertaining to protection of a party's Intellectual Property Rights, Confidential Information or Personal Data. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to seek in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in the Agreement.

13.6. Assignability. Neither party may assign performance of the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other party; provided, however that either party may assign its rights and obligations under the Agreement to any of its Affiliates, or to any entity into or with which it is merged, or that acquires all or substantially all of its assets, upon notice to the other party. Subject to the foregoing restriction on assignment, the Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.7. Insurance. Each party shall, at its own cost and expense, procure and maintain in full force and effect during the Agreement Term, policies of insurance, of the types and in the minimum amounts reasonably necessary and appropriate in its industry to perform its respective obligations under the Agreement, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed or used. Upon a party's request, the other party shall provide its certificate of insurance.

13.8. Notices. Any notice or report required or permitted to be given or made under the Agreement by either party shall be in English, in writing and be deemed to have been fully given and received (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt; or (v) to the extent expressly permitted in the Agreement, one (1) day after being sent via email. Notices shall be sent to the parties at the addresses set forth in this TOS or such other address as a party may specify in writing to the other. All notices to Upland must be made to the address(es) listed below and all notices to Customer must be made to the mailing or email address of Customer's primary contact with Upland.

Upland notice address:  
ATTN: General Counsel  
401 Congress Ave., Suite 1850  
Austin, TX, U.S. 78701  
[legal@uplandsoftware.com](mailto:legal@uplandsoftware.com)

To inform Customer of changes to the Services, or for other matters of importance (e.g., notifications regarding upcoming scheduled maintenance), Upland may broadcast messages through the Application or post messages on Upland's web site. In each such event, Upland shall inform Customer of the broadcast by e-mail.

13.9. Business Continuity and Disaster Recovery. During any Subscription Term, Upland shall comply with its then current applicable Business Continuity and Disaster Recovery Plans. Upland shall test such plans at least once a year. Upland shall provide Customer with summaries of such plans and test results upon written request. Upland may not modify such plans to provide materially less protection to Customer without Customer's prior written consent, which may not be unreasonably conditioned or withheld.

13.10. Force Majeure. If the performance of the Agreement is adversely restricted or if either party is unable to conform to any warranty or obligation by reason of any Force Majeure Event then, except with respect to obligations to pay any fees or expenses and to obligations under Section 13.9 above (*Business Continuity and Disaster Recovery*), the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both parties shall proceed whenever such causes are removed or cease. "**Force Majeure Event**" means any failure or delay caused by or the result of causes beyond the reasonable control of a party or its service providers that could not have been avoided or corrected through the exercise of reasonable diligence, including natural catastrophe, internet access or related problems beyond the demarcation point of the party's or its applicable infrastructure provider's facilities, state-





sponsored malware or state-sponsored cyber-attacks, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, or other similar occurrence. If a party fails to perform its obligations as a result of such restriction for a period of more than thirty (30) days, then the other party may terminate the affected Services without liability.

13.11. Waiver. The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of the Agreement.

13.12. Severability. Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this TOS, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.

13.13. Counterparts. Each portion of the Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a facsimile copy or a ".pdf" image delivered via email of an executed copy of any such portion of the Agreement signed by an authorized signatory (manuscript signature or using electronic signature) shall be deemed an original.

13.14. Entire Agreement. This TOS, together with the Sales Order, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information,

arrangements and understandings, whether oral or written, express or implied, with respect to the provision and use of the Services. In the event of a conflict between the terms and conditions of this TOS and any Sales Order, the terms and conditions of this TOS shall prevail except to the extent the conflict pertains to product or service description (e.g., type, quantity, usage volume) or pricing information, in which case the terms of the Sales Order shall prevail. No usage of trade or other regular practice or method of dealing between the parties shall be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorized signatory of the party against whom enforcement is sought; any additional, supplementary or conflicting terms supplied by either party (whether in hard copy or electronic form), including those contained on or within any invoice, purchase order, or standard terms of purchase, or any click-through license agreement or terms of use, are specifically and expressly rejected by each party.

13.15. Anti-Corruption. Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party shall use reasonable efforts to promptly notify the other party.

13.16. Third Parties. Except as expressly set forth in the Agreement, no provisions of the Agreement are intended nor shall be interpreted to provide or create any third-party beneficiary rights or any other rights of any kind in any other party. If the law governing the Agreement is English law, then a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.



## SOFTWARE-AS-A-SERVICE SCHEDULE UPLAND SOFTWARE

This Software-as-a-Service Schedule, together with its exhibits, supplements the TOS to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Applications and Customer will be permitted to access and use such Services and Applications. This Schedule shall apply only where a Sales Order made subject to this TOS expressly indicates that Customer has purchased rights to a Software-as-a-Service (or “SaaS”) Application made available by Upland on a subscription basis.

### SUPPLEMENTAL TERMS AND CONDITIONS

#### 1. PROVISION OF THE SERVICES

1.1. General. Upland shall make the Application available and provide Support Services to Customer and its Users as detailed herein.

1.2. Use of the Application and Documentation. Subject to the Entitlements and otherwise in accordance with the terms of the Agreement, Upland hereby grants to Customer and each of its Users a non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, subscription license, to: (i) access via a web-based interface, execute and otherwise use the Application provided by Upland on a hosted basis, solely for Customer's operations in its ordinary course of business; and (ii) use reproduce, modify, and distribute and display the applicable Documentation, in each case solely for Customer's operations in its ordinary course of business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. Use Limitations. Customer agrees that it shall not exceed the Entitlements. Without limiting the generality of the foregoing, where the Sales Order indicates that an Application is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use each such Application shall not exceed the number of User subscriptions purchased; and (ii) it shall not allocate (or share) any User subscription among more than one individual User unless such User subscription has been reassigned in its entirety to another individual User.

#### 2. MAINTENANCE AND SUPPORT SERVICES

2.1. Standard Support Services. During the Subscription Term and otherwise subject to Customer's compliance with Agreement, Upland shall provide Support Services to Customer in accordance with the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A, below.

2.2. Enhanced Support Services. For certain of Upland's Applications, Customer may request to purchase rights to enhanced or upgraded Support Services to be provided by Upland on a subscription basis (the “**Enhanced Support Services**”) by contacting Customer's account representative. The fees, Subscription Term and description of the Enhanced Support Services to be provided by Upland shall be detailed on a Sales Order, and upon the parties' execution of such Sales Order, the Standard Maintenance and Support Terms and Conditions set forth in Exhibit A shall be supplemented accordingly. Where Enhanced Support Services are purchased by Customer during an active Subscription Term, fees for such Enhanced Support Services shall be pro-rated for the remainder of such Subscription Term.

2.3. Customization Support. To the extent Upland develops and provides to Customer any customizations, integrations, or custom reports, Upland shall maintain and support any such customizations, integrations, or custom reports in accordance with the Standard Maintenance and Support Terms and

Conditions set forth in Exhibit A, subject to additional fees as agreed by the parties in a Sales Order.

#### 3. CUSTOMER'S RESPONSIBILITIES

3.1. Compliance and Use. Customer shall:

- 3.1.1. be solely responsible for maintaining the status of its User base and shall safeguard all User authentication credentials and account information within its possession or under its control;
- 3.1.2. be solely responsible for its Users' compliance with the Agreement and the acts or omissions of its Users relating to the Agreement to the same extent as if they were Customer's own;
- 3.1.3. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland and of the means by which such Customer Data was acquired;
- 3.1.4. use commercially reasonable efforts to prevent unauthorized access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify Upland in writing of any such unauthorized access or use or violation by Customer or its Users of the Agreement;
- 3.1.5. use each Application only in accordance with the Documentation;
- 3.1.6. cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Application or Documentation.

3.2. Use Restrictions. Except as (i) otherwise expressly provided in the Agreement, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer and Customer's Users shall not, and shall not permit or authorize third parties to:

- 3.2.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application;
- 3.2.2. access all or any part of the Application or Documentation in order to build a product or service that competes with the Application, Services or the Documentation;
- 3.2.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Application, Services or Documentation, (e.g., as a service bureau) or otherwise knowingly make the Application or Documentation available to anyone other than the Users;



- 3.2.4. attempt to gain unauthorized access to the Application or related systems or networks or otherwise circumvent or disable any security or other technological features or measures of the Application;
  - 3.2.5. attempt to probe, scan, penetrate or test the vulnerability of an Upland system or network absent Upland's prior express written consent in each case;
  - 3.2.6. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material;
  - 3.2.7. upload, transmit or otherwise process and Protected Health Information (PHI) or any other regulated data or information in violation of any applicable law or regulation;
  - 3.2.8. upload, transmit or otherwise process and Payment Card Information (PCI) in violation of any Payment Card Information Security Standards or other similar requirements;
  - 3.2.9. knowingly use the Application to store or transmit Viruses or other malicious code;
  - 3.2.10. knowingly interfere with or disrupt the integrity or performance of the Application.
- 3.3. Survival. This Section 3 shall survive the termination or expiration of the Agreement for so long as Customer and/or its Users retain access rights and/or use of the Application (e.g., as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).



**EXHIBIT A**  
**STANDARD MAINTENANCE AND SUPPORT TERMS AND CONDITIONS**

These Standard Maintenance and Support Terms and Conditions are made a part of and incorporated into the terms of the Software-as-a-Service Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

**1. Response Times and Commitments:**

Upland attempts to respond to and resolve all issues in a timely manner, however issues impacting Customer's production systems take priority and are classified by Severity Level in accordance with the following:

Severity Level	Definition	Response Time	Commitment
Cloud Incident ("Outage")	Upland's cloud service is unavailable and/or inaccessible for all Users.	1 Hour (24/7/365)	(24/7/365) triage with hourly status updates;  Immediate and continuous effort to restore service;
1 – Urgent	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users;  Defect causes a material loss of Customer Data in production system; or  Security-related Defect.	1 Business Hour	Business Hour triage with daily status updates (M-F);  Immediate and continuous effort within business hours to resolve the Defect or provide a Workaround;
2 – High	Production system Defect that prevents business critical work from being done and a Workaround exists; or  Defect violates the material specifications in the Documentation and impacts Customer's production system.	4 Business Hours	Business Hour triage with regular status updates (M-F);  Upland shall use reasonable efforts to resolve the Defect as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 – Normal	All other Defects.	1 Business Day	Business Hour triage with regular status updates (M-F);  Defects shall be addressed in Upland's normal Update

**2. Upland Support Services Scope & Availability:**

- i. **Support Services Defined.** Support Services shall consist of assistance to Customer with respect to:
  - a. Guidance regarding proper use of the Application;
  - b. Application Defect verification, reporting, tracking and resolution; and
  - c. Application licensing assistance.
- ii. **Support Services Availability.** Unless otherwise agreed upon in writing, Support Services shall be available:
  - a. Service Outage: 24/7/365 via phone and online community (email excluded); and
  - b. Severity 1/2/3: Unless otherwise agreed by the parties in a signed writing, 9:00 am to 6:00 pm, Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**") via phone, email and online community.

**3. Upland Support Limitations:**

- i. **Support Limitations.** Support Services do not include:
  - a. Application training, design or configuration assistance;
  - b. Support for applications, hardware and dependent technology not supplied by Upland;
  - c. Support for issues resulting from Customer's negligence or failure to use the Application per Upland's instructions or recommendations;
  - d. Development support for API/SDK usage;
  - e. Support of custom development not supplied by Upland; or
  - f. Product installation and upgrade assistance.
- ii. **Customer Defects.** If Customer notifies Upland of a problem and Upland correctly determines that the problem is due to Customer's incorrect or improper use of the Application or failure to comply with the Standard Support Terms or the TOS (as

opposed to a Defect in the Application), the resolution of such problem is not covered by Upland's Support Services. However, Upland may provide Professional Services to address or cure the problem in accordance with the terms of the Agreement.

- iii. **Release Support Period.** Upland shall support a release of the Application if such release (a) was made generally available during the previous twelve months; and (b) is no more than one major release (e.g. 2.0 to 3.0) behind the most current release of the Application. Other versions of the Application shall not be supported unless Upland and Customer mutually agree otherwise in writing. Major release upgrades are not included in the standard fees and must be purchased separately. Customer acknowledges that Upland's obligations hereunder apply only to production versions of the Application.
- iv. **Third Party Products.** Support Services do not cover the operation or use of third-party hardware or software or an Application modified by any party other than Upland or used in any manner in violation of the TOS or inconsistent with the Documentation.

#### 4. **Customer Obligations:**

- i. **First Level Support/Single Point of Contact.** All communications relating to Support Services shall be supervised, coordinated, and undertaken by no more than two designated contact persons per Customer work-shift who shall act as a single point of contact between Customer and Upland. Each contact must possess or, at Customer's expense, acquire the necessary expertise and training to diagnose and resolve Defects with direction by Upland.
- ii. **Pre-Call Procedures.** Prior to requesting Support Services from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Application. If such efforts are unsuccessful in eliminating the Defect, Customer shall then promptly notify Upland of the Defect. Customer shall confirm that the following conditions are met prior to contacting Upland for Support Services:
  - a. **Reproduction.** If possible, the situation giving rise to the Defect is reproducible in a single supported Application;
  - b. **Support Representative.** The Customer contact has the technical knowledge regarding the Application and any other software or hardware systems involved, and in the facts and circumstances surrounding the Defect;
  - c. **Access.** Customer's system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and
  - d. **Cooperation.** The Customer contact shall follow the instructions and suggestions of Upland's support personnel when servicing the Application.
- iii. **Remote Connection.** If appropriate, Customer shall cooperate with Upland to allow and enable Upland to perform support services via remote connection using standard, commercially available remote connection software. Customer shall be solely responsible for instituting and maintaining proper security safeguards to protect Customer's systems and Customer Data.
- iv. **Updates.** Customer acknowledges and agrees that Updates provided by Upland pursuant to these Standard Support Terms may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with the terms of the Agreement.
- v. **Disclaimer.** Upland shall not be responsible to provide Support Services, Updates, or any other maintenance and support to the extent that Defects arise because Customer (a) misuses, improperly uses, misconfigures, alters, or damages the Application; (b) uses the Application with any hardware or software not supplied or supported by Upland; (c) uses the Application at any unauthorized location, if any; (d) fails to access an Update to the Application if such Update would have resolved the Defect; or (e) otherwise uses the Application in a manner not in accordance with the Documentation, these Standard Support Terms or the TOS.

#### 5. **Software as a Service Availability:**

- i. **Availability Requirement.** Upland shall make the Application Available, as measured on a 24 hours per calendar day basis over the course of each calendar month during the Initial Term and each Renewal Term and any additional periods during which Upland does or is required to provide the Application (each such calendar month, a "**Service Period**"), at least 99.9% of the time, excluding only the time the Application is not Available solely as a result of one or more Exceptions (the "**Availability Requirement**"). "**Available**" means the Application is available and operable for access and use by Customer and its Users over the Internet.
- ii. **Exceptions.** No period of Application degradation or inoperability shall be included in calculating Availability if such downtime or degradation is directly caused by any of the following ("**Exceptions**"):
  - a. Customer's or any of its Users' use of the Application in a manner inconsistent with the Documentation;
  - b. failures of Customer's or its Users' Internet connectivity not caused by Upland;
  - c. Internet or other network traffic problems other than problems arising in or from networks actually provided or controlled, or required to be provided or controlled, by Upland; or
  - d. Scheduled Downtime.
- iii. **Scheduled Downtime.** Upland shall notify Customer and its Users with whom Upland has communicated at least 72 hours in advance of all scheduled downtime of the Application in whole or in part ("**Scheduled Downtime**") (a) not be scheduled between the hours of 8 a.m. and 9 p.m., Eastern Time, Monday-Friday (unless otherwise agreed by the parties in a signed writing), and (b) occur more frequently than 15 hours per calendar month.



iv. **Recovery Objectives.** Upland shall maintain a recovery time objective of 24 hours and recovery point objective of 4 hours.

6. **Definitions:**

- i. **"Defect"** means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the TOS entered into between Customer and Upland).
- ii. **"Updates"** means a subsequent release of the Application that Upland makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2). Updates shall not include any other releases of the Application (e.g., 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.
- iii. **"Workaround"** means a modification or "patch" for a particular version of the Application, which may be of a temporary or interim nature, to help cure or avoid a Defect.
- iv. **"Service Level"** means the certain level of Support Services (Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order.