

## END USER MASTER SUBSCRIPTION AGREEMENT for AgentNow

This End User Master Subscription Agreement (“**MSA**” or “**Agreement**”) is between Upstream Works Software Ltd. (“**UWS**”), with offices at 7777 Weston Road Unit 1000 Woodbridge Ontario Canada L4L0G9 and “**You**” the company who has elected to purchase the Services (“**End User**”) and duly agreed to and accepted the terms of this MSA by either a) delivering to UWS or its resellers (“**Reseller**”) an Order to access the Services for a Term (as defined below), b) clicking a box indicating acceptance of this Agreement, c) by explicit signature of this Agreement, or d) by using any free services provided by Upstream Works. The effective date of this MSA is the date this Agreement was agreed to and accepted by the End User. (“**Effective Date**”).

The terms and conditions in this Agreement relate to, and govern, your use and access to the Services, and contain other important provisions. If an individual is entering into this Agreement on behalf of an organization, the individual represents that they have the authority to bind that organization to the terms and conditions in this Agreement.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY before agreeing to its terms. Your consent is completely optional, but you cannot use or access the Services without providing consent and agreeing to the terms and conditions in this Agreement. In consideration of the mutual promises set out below and for other good and valuable consideration, receipt of which being hereby acknowledged **Acceptable**, UWS and End User agree as follows:

### Section 1. **DEFINITIONS.**

**1.01 Defined Terms.** In addition to the terms defined above and elsewhere in this MSA, the following terms as used in this MSA shall have the meanings set forth below:

“**Use Policy**” is as defined at [www.upstreamworks.com/acceptableuse](http://www.upstreamworks.com/acceptableuse).

“**Acceptance**” shall mean the earliest to occur of any of the following events: (a) formal signed acceptance, (b) an End User’s first production use of the Services, (c) 90 days after delivery of any UWS Integrated Software to the End User, (d) 180 days after the receipt of any Order, or (e) resolution of all Severity 1 or 2 issues determined in the End User’s acceptance testing phase.

“**Affiliate**” means any entity that, directly or indirectly, controls, is controlled by or is under common control with End User, where “control” is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interests of such entity.

“**Agreement**”, “**EUMSA**” or “**MSA**” mean this agreement, all attached exhibits and any other documents made a part hereof or incorporated by reference herein, including any mutually executed written amendments hereto and all Orders.

“**Authorized Party**” means the individual or corporation on whose behalf an individual has agreed to this Agreement or who has provided a valid Order, or any subsidiaries of that entity.

“**Data Protection Requirements**” shall mean the Data Protection Act 2018 and all other applicable legislation implementing European Community Directives 95/46, 2002/58 and 2009.136, and any subsequent European Union legislation in relation to the protection of personal data implemented in England and Wales and any similar or equivalent legislation in any other relevant jurisdiction.

“**Documentation**” shall mean the operating manuals, including a description of the functions provided by the UWS Services, user instructions, technical literature and all other related materials in the English language, in both eye-readable and machine-readable, printable form, which may, from time to time, be supplied to End User by UWS or Reseller to facilitate the use and application of the Services.

“**End User**” means the company or other legal entity for which an individual has accepted this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into an Order.

“**End User Data**” means any means electronic data and information submitted by or for End User to the Services, excluding any third-party applications.

“**Licenses**”, “**Subscription Licenses**”, or “**Software Licenses**” refer to licensed software that has been rented for a contracted period of time under the terms of this Agreement.

“**Maintenance and Support**” means the Software maintenance and support services more particularly described in Section 3.09 and detailed in Schedule 1 of this Agreement.

“**Malicious Code**” means any virus, trojan horse, worm, logic bomb, drop-dead device, backdoor, shutdown mechanism or similar software, hardware, or combination of any of the foregoing that is intended or designed to, or has the effect of disabling, deleting, erasing, denying authorized access to, permitting unauthorized access to, repossessing, damaging, destroying, corrupting or otherwise affecting or interfering with the provision or use of any software, hardware or system.

“**Order**” means a valid amendment, order form, online purchasing portal submission, or purchase order submitted by End User or its Affiliates which includes a list of UWS Services or Subscription Licenses to be provided by UWS or its Reseller. When End User orders UWS Services through a Reseller under End User’s agreement with the Reseller, UWS confirms that except as set forth herein, as between UWS and End User, this MSA governs such UWS Services or Licenses.

“**Personal Data**” is any information that relates to an identified or identifiable living individual.

“**Reseller**” means a reseller of UWS Services, UWS Products, Licenses, and/or installation and/or Maintenance and Support services for the UWS Product or UWS Services (the “Services”) that are provided by either UWS or the Reseller.

**“Security Breach”** is any incident that results in unauthorized access to computer data, applications, networks or devices. It results in information being accessed without authorization.

**“Services”** or **“UWS Services”** means the services that are ordered by an End User under an Order or online purchasing portal or provided to End User free of charge (as applicable) or under a free trial, and made available online by UWS, as described in the Documentation.

**“Statement of Work”** means a statement of work that is entered into between the End User or Reseller and UWS under this MSA and executed by the parties. A Statement of Work includes any amendments thereto made by way of program change requests. (“SOW”).

**“Third Party Software”** shall mean any software not developed by UWS used to interact with the Services, or by UWS to provide Services.

**“UWS Integrated Software”** means any custom software developed by UWS or a third party on its behalf that integrates with any UWS Software or Service, and provided as either a software application or as a component of the Services provided Services for End User pursuant to an Order as defined in an SOW.

**“UWS Product”** means the UWS Software, Third Party Software, and UWS Integrated Software that is licensed to the End User or used to deliver the Services under the terms of this Agreement.

**“UWS Software”** shall mean, collectively or individually, the software programs developed or used by UWS to provide the Services described in an Order., or that are Licensed to the End user by UWS.

## Section 2. **UWS RESPONSIBILITIES**

**2.01 Provision of Services.** Provision of Services. Subject to and conditioned on your payment of fees under this Order and compliance with the terms and conditions of this Agreement, during the Term of this Agreement, UWS will:

- i. Deliver any Subscription Licenses to the End User for its internal use, provide UWS basic support for the Licenses to End User at no additional charge, and/or enterprise support if Premium Integrations or enterprise support has been purchased, as per Section 3.09, or
- ii. make the Services available to End User pursuant to this Agreement, and the applicable Order and Documentation, provide UWS basic support for the Services to End User at no additional charge, and/or enterprise support if purchased as per Section 3.09,
- iii. use commercially reasonable efforts to make any subscribed online Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which UWS shall give advance electronic notice), and (b) any unavailability caused by circumstances beyond UWS's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving UWS employees), Internet service provider failure or delay, hosting service provider failures or delays, Non-UWS Application, pandemic, or denial of service attack, and
- iv. provide any additional services as set out in a Statement of Work entered into between the parties.

**2.02 Data Protection.** UWS will maintain appropriate administrative, physical, and technical safeguards for protection of End User Data that is held by UWS. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of End User Data. During the Term of this Agreement, UWS shall (i) not use End User Data except to provide the Services, or to prevent or address service or technical problems, (ii) verify Service improvements, in accordance with this Agreement and the Documentation; and (iii) not disclose End User Data to anyone other than Authorized Parties in accordance with this Agreement.

Upon request by End User made within 30 days after the effective date of termination or expiration of this Agreement, UWS will make End User Data available to End User for export or download as provided in the Documentation. After such 30-day period, UWS will have no obligation to maintain or provide any End User Data, and as provided in the Documentation will thereafter delete or destroy all copies of End User Data in its systems or otherwise in its possession or control, unless legally prohibited.

**2.03 Unauthorized Disclosure.** In the event either Party becomes aware of any loss, theft or unauthorized access, copying, modification, use or disclosure of the Confidential Information of the other Party, or in the case of Customer, the Services or Solution (a “Security Event”), it will, in accordance with applicable law: (i) notify the other Party in writing of the circumstances of such Security Event, as well as the nature and details of such loss, theft or unauthorized access, copying, modification or disclosure, including the nature and content of the information so affected as soon as feasible following discovery of the Security Event (taking into account any legal or regulatory restraints on notification and the need to avoid prejudicing current investigations); (ii) promptly respond to such Security Event and investigate and remediate the Security Event in accordance with commercially reasonable industry standards and keep all records, reports and evidence of the Security Event as required by applicable law; (iii) provide cooperation and assistance to the other Party, and promptly take such actions as may be necessary or reasonably requested by the other Party to minimize the extent of any impacts of such Security Event; (iv) take all such actions to notify any government authorities or affected persons as may be required by applicable Law; (v) maintain all relevant and applicable records of, and all relevant and applicable records or other information pertaining to, such Security Event, including the results of any investigation or investigation by law enforcement officials as required by applicable Law; and (vi) cooperate in all reasonable respects with the other Party, including without limitation, working with the other Party on the wording of any required notifications and communications, and take such measures as necessary to minimize the likelihood of future disclosures, losses or breaches. Each Party agrees to respond to reasonable inquiries received from the other Party in connection with a Security Event, and where requested shall make available relevant employees to discuss such inquiries with the other Party's representatives. Each Party shall treat all such information received from the Party experiencing the Security Event, as the Confidential Information of the Party experiencing the Security Event.

**2.04 Data Loss.** For any provided Services, UWS provides regular data backups and uses industry standard best practices, but accepts no

liability for any partial data loss of End User interaction data, regardless of source.

**2.05 HIPAA and PCI Compliance.** For any provided Services, UWS can provide encrypted data and support HIPAA and PCI compliant implementations at additional cost. HIPAA and PCI compliance are not supported unless specifically outlined in an associated Order.

**2.06 GDPR Exclusions.** Upstream Works Assist Knowledge services are not licensed to hold any form of personally identifiable information (PII) and are not GDPR compliant. UWS accepts no liability under the terms of this MSA for any PII that is stored in the Upstream Works Customer Assist or Upstream Works Expert Assist databases. Upstream Works Advanced Reporting services are not licensed to hold any form of personally identifiable information (PII) and are not GDPR compliant. UWS accepts no liability under the terms of this MSA for any PII that is stored in the Upstream Works Advanced Reporting databases.

### Section 3. **USE OF SERVICES**

**3.01 Subscriptions.** Software Licenses are licensed from UWS as a SaaS-based, UWS-hosted model for a specified term under the terms of a subscription.

- **SaaS-Based Subscription Model:** In the SaaS model, UWS hosts and manages the Software Services, and the subscription grants you access to these Services for internal use by Authorized Parties, as described herein. Access to the Services is provided via the UWS-hosted platform, and UWS will provide necessary passwords and account details for access. The Services are available for use only for the term stated in the applicable Order, and the subscription grants access to the Services as hosted by UWS.

Subscriptions may be added during the subscription term at the same pricing as the underlying subscription, prorated for the remaining portion of the term. Any added subscriptions will terminate on the same date as the underlying subscriptions.

End User agrees that its purchases are not contingent on the delivery of any future functionality or features, nor dependent on any oral or written public comments made by UWS regarding future functionality or features. Should an addition to the subscription result in a price reduction, the reduced price will apply only to the new subscriptions and will be effective for the duration of the current term.

**3.02 UWS Integrated Software.** If UWS Integrated Software is developed for End User under a Statement of Work, such software shall be delivered as part of the Services and can be used without additional royalties or fees other than those defined in the Order for the duration of any Subscription. For purposes of this Agreement, any UWS Integrated Software developed shall be considered part of the Master Subscription or Services.

**3.03 Usage Limits.** License Subscriptions and Services are subject to usage limits specified in the Order and Documentation. If End User exceeds a contractual usage limit, End User will execute an Order for additional quantities of the applicable Subscription or Services promptly upon UWS's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

**3.04 End User Responsibilities.** End User will be responsible for:

- i. enabling access to the Subscription or Services for use only by Authorized Parties solely for the internal business purposes of End User and its Affiliates in accordance with the Documentation and not for the benefit of any third parties.
- ii. all internal users' compliance with this Agreement, and any Documentation,
- iii. any and all aspects of any End User Data,
- iv. the interoperation of any Non-UWS Applications with which End User uses Services,
- v. preventing unauthorized access to or use of Services, and notifying UWS promptly of any such unauthorized access or use,
- vi. using the Subscription or Services only in accordance with this Agreement, Documentation, the Acceptable Use Policy, Orders, and applicable laws and government regulations,
- vii. complying with terms of service of any Non-UWS applications with which End User uses.
- viii. have sole responsibility for the accuracy, quality, and legality of all End User Data, including that the End User Data does not infringe, violate or misappropriate any third party intellectual property or privacy right;
- ix. have sole responsibility as to obtaining the necessary and required consents, licenses, permits, permissions, releases clearances and rights to use, display, process, post, upload, share and transfer all End User Data;
- x. take commercially reasonable efforts to prevent unauthorized access to, or use of, the Service through login credentials of Authorized Parties, and notify UWS promptly of any such unauthorized access or use;
- xi. in the case of a Subscription License, providing and supporting all operating environments for the software; and
- xii. limit usage to the number of concurrent users outlined in the applicable order. In the event that an overage is found, End User shall pay UWS for those licenses from the date of first use until the termination of the subscription agreement, at UWS's then current rates.

Notwithstanding anything to the contrary in this Agreement, UWS may temporarily suspend End User's and any Authorized Party's access to any portion or all of the Services if: (i) UWS reasonably determines that (A) there is a threat or attack on any of the UWS Products, (B) End User's or any Authorized Party's use of the Services disrupts or poses a security risk to the UWS Products or to any other customer or vendor of UWS, (C) End User, or any Authorized Party, is using the Services for fraudulent or illegal activities, (D) subject to applicable law, End User has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become

the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, or (E) UWS provision of the Services to End User or any Authorized Party is prohibited by applicable law; (ii) any vendor of UWS has suspended or terminated UWS access to or use of any third-party services or products required to enable End User to access the Services; or (iii) in accordance with Section 4.06 (any such suspension described in subclause (i), (ii), or (iii), a "Service Suspension"). UWS shall use commercially reasonable efforts to provide written notice of any Service Suspension to End User and to provide updates regarding resumption of access to the Services following any Service Suspension. UWS shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. UWS will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that End User or any Authorized Party may incur as a result of a Service Suspension.

**3.05 End User Restrictions.** End User will not, directly or indirectly, and will not permit any Authorized Parties to:

- i. use, reproduce, sell, resell, license, sublicense, distribute, reproduce, make available, rent, or lease any UWS Products or Service or content, except as expressly permitted in this Agreement, or include any Service in a service bureau or outsourcing offering,
- ii. use the Service or UWS Products in violation, misappropriation, or infringement of any intellectual property right or other right of any other person, the Acceptable Use Policy, or any applicable laws,
- iii. use the Service or UWS Products to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- iv. use the Service or UWS Products to store or transmit Malicious Code,
- v. interfere with or disrupt the integrity or performance of any Service or third-party data contained therein,
- vi. attempt to gain unauthorized access to any Service or its related systems or networks,
- vii. permit direct or indirect access to or use of any Services or UWS Products in a way that circumvents a contractual usage limit,
- viii. use any Services or UWS Products to access or use any of UWS intellectual property except as permitted under this Agreement, an Order, or the Documentation,
- ix. use the Service or UWS Products for any purpose other than permitted by this MSA,
- x. except to the extent permitted by applicable law, reverse engineer, decompile, or disassemble the Service or UWS Products, modify, enhance, adapt, or translate the Service or UWS Products to
  - x(a). build a competitive product or service,
  - x(b). build a product or service using similar ideas, features, functions, or graphics of the Service,
  - x(c). copy any ideas, features, functions, or graphics of the Service, or
  - x(d). determine whether the Services are within the scope of any patent,
- xi. make UWS Service or UWS Products available to unauthorized third parties,
- xii. remove or modify any proprietary notices from the Service or UWS Products,
- xiii. prepare, modify, copy, or create derivative works based on a Service or UWS Products any part, feature, function, or user interface thereof,
- xiv. frame or mirror any part of any Service, other than framing on End User's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation;
- xv. collect, harvest, reverse look-up, trace, or otherwise seek to obtain any information on any other user of or visitor to the Services; or
- xvi. take any action that imposes an unreasonable or disproportionately large load on the infrastructure of Solution or Services or any systems or networks connected to them.

**3.06 Removal of Third-Party Applications.** If End User receives notice that a third-party application provided by them and used in conjunction with the Services or UWS Products must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use policy, End User will promptly do so. If End User does not take required action within a reasonable time period, UWS may at its discretion, disable the applicable Service, UWS Products and/or third-party application. If requested by UWS, End User shall confirm such deletion and discontinuance of use in writing and UWS shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if UWS is required by any third-party rights holder to remove End User Data, UWS may discontinue End User's access to the Services.

**3.07 Rights Granted.** The foregoing represents the only rights granted to, and (together with the applicable license/ usage limit [such as number of users, etc.], if any, expressly stated in the applicable Order which shall apply only to production copies) restrictions placed on (in addition to those in Section 4), End User with respect to the UWS Services and/or Documentation.

**3.08 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, UWS, its Affiliates, and its licensors reserve and retain all their rights, titles and interests in and to the Services, including without limitation copyright, patents, trade secrets and/or any other intellectual property rights, in and to the Services, any and all UWS Product used to provide the Services and in the UWS Products and all associated Documentation and modifications or translations thereof (excluding any modifications or translations made by End User or its Affiliates for its use in accordance with Section 2.01 above). No rights are granted to End User hereunder other than as expressly set forth herein.

3.09 **Standard End User Support.** UWS provides Standard UpKeep End User Support (as defined and outlined in Schedule 1) for the term of any Services purchased from an Order, provided at no additional cost.

3.10 **UpKeep Enterprise Support.** UWS may provide enhanced support for any End User purchasing Enterprise level services from UWS, as outlined in Schedule 2 to this Agreement. UWS Integrated Software will be covered under the terms of this Upkeep Enterprise Support but may incur additional fees.

3.11 **Sublicenses.** Some UWS Software uses IP from Cisco Systems. End User hereby agrees to any applicable sections of the Cisco Webex End User License Agreement, found at [https://www.cisco.com/c/dam/en\\_us/about/doing\\_business/legal/eula/cisco-end-user-license-agreement-webex-direct.pdf](https://www.cisco.com/c/dam/en_us/about/doing_business/legal/eula/cisco-end-user-license-agreement-webex-direct.pdf). For clarity, any sections of the Cisco EULA that overlap the provisions of this EUMSA shall supersede the conditions of this Agreement for Webex software only. Any sections of the Cisco EULA that overlap the provisions of this EUMSA shall be subservient to the conditions listed herein for any UWS software.

#### Section 4. **Consideration.**

4.01 **Invoices and Payment.** All fees due hereunder and under an Order Forms or an applicable Statement of Work will be invoiced to End User in accordance with their respective Order Forms, and payments will be remitted by End User to UWS or its Authorizer Resellers. Except where the applicable Order Form identifies a different payment period, all fees due hereunder (except fees subject to good faith dispute in accordance with Section 4.0.6) shall be due and payable within thirty (30) days of invoice date, provided that invoices are sent to End User no later than twenty-four (24) hours after the date of invoice (and if not, then the terms are amended to net thirty (30) days from End Users receipt of the late-received invoice). UWS may send all End User invoices electronically (by email or otherwise). All fees are quoted and payable in the currency listed in the respective Order Forms and are based on access rights acquired and not actual usage. End User shall provide UWS is responsible for providing complete and accurate billing and contact information including a valid email address, and is further responsible for providing any updates or changes to said information promptly.

4.02 **Non-cancelable and Non-refundable.** Except as specifically set forth to the contrary under Section 6.02 "Warranty Remedies", Section 6.05 "UWS Indemnification", Section 9 "Termination", all payment obligations under any and all Order Forms are non-cancelable and all payments made are non-refundable.

4.03 **Taxes.** For any orders between End User and UWS, and not End User and a Reseller, End User is responsible for all harmonized sales tax (HST), provincial sales tax (PST), goods and services tax (GST), value added tax, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, provincial, territorial, or local governmental entity on any amounts payable by End User hereunder (exclusive of taxes on UWS's net income) ("Taxes") arising on or measured by amounts payable to UWS under this MSA or furnish UWS with evidence acceptable to the taxing authority to sustain an exemption therefrom. UWS shall provide reasonable cooperation to End User if End User contests any proposed Taxes. UWS shall promptly refund to End User any Taxes or portions thereof previously paid by End User and refunded to UWS.

4.04 **Overdue Charges.** If any invoiced amount is not received by UWS by the due date, then End User shall accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) UWS may modify payment terms for subsequent orders accordingly.

4.05 **Suspension of Service.** If any charge owing by End User under this or any other agreement for services is 90 days or more days past the invoice date, UWS may, without limiting its other rights and remedies, accelerate End User's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full. UWS will give End User at least 10 days' prior written notice that its account is overdue, before suspending Services.

4.06 **Payment Disputes.** If End User disputes in good faith any charge on an invoice, End User shall pay the undisputed portions of such invoice when due and may withhold the disputed amount pending resolution of the dispute, provided that End User shall provide notice of the dispute within forty-five (45) days of receiving the invoice in question. Upon resolution of such dispute, the agreed-upon portion of the disputed amount is due thirty (30) days from the date upon which the dispute was resolved. If End User withholds any payment pursuant to this Section, End User shall notify UWS of the basis for such withholding prior to the date payment is due. If the parties are following the process set forth in this Section, failure to pay the disputed amount during resolution of the dispute shall not be considered a breach of contract. UWS will not exercise its rights under Section 4.04 "Overdue Charges" or Section 4.05 "Suspension of Service" above if End User is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

#### Section 5. **CONFIDENTIAL INFORMATION**

5.01 **Confidential Information.** A party may from time to time disclose (the "Disclosing Party") to the other party (the "Receiving Party") certain Confidential Information (as hereinafter defined) of the Disclosing Party. Except as expressly permitted by this MSA, for a period of three (3) years from the termination of this MSA, the Receiving Party shall protect the Confidential Information of the Disclosing Party from unauthorized dissemination, using its best efforts to prevent unauthorized disclosure. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this MSA, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this MSA, and who are, with respect to the Confidential Information of the Disclosing Party, bound in writing or other acknowledgement by confidentiality terms no less restrictive than those contained herein. Notwithstanding the foregoing, Confidential Information may be disclosed if such disclosure is required by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately in writing, and shall cooperate reasonably with the Disclosing



Party, at the Disclosing Party's expense, in obtaining a protective or similar order with respect thereto.

**5.02 Definition of Confidential Information.** For purposes of this MSA, the term "Confidential Information" shall mean (a) in the case of UWS, the UWS Software including any customization services in both object and source code forms, and any related software in expressed form, systems, functions, applications, software architecture, technology, idea, algorithm, concepts, innovations, discoveries, processes, techniques, databases, or information contained therein, including without limitation any documentation, trade secrets and know-how related to any of the foregoing; (b) in the case of End User, the End User Data; (c) a party's product plans, designs, costs, prices and names, non-published financial information, marketing plans, distribution lists, business opportunities, personnel, research, development or know-how; (d) any information designated by the Disclosing Party which, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential as confidential in writing or, if disclosed orally would; (e) the terms and conditions of this MSA, and (f) any information that the Receiving Party knows is confidential or proprietary or would be reasonably expected to be confidential or proprietary based on the nature of such information; provided, however that Confidential Information will not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the Receiving Party; (ii) is known and has been reduced to tangible form by the Receiving Party at the time of disclosure and is not subject to restriction; (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; (iv) is lawfully obtained from a third party who has the right to make such disclosure; or (v) is released for publication by the Disclosing Party in writing.

**5.03 Return of Confidential Information.** The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form: (a) upon the written request of the Disclosing Party; or (b) upon the expiration or termination of this MSA, whichever comes first, and in both cases, upon request from the Disclosing Party, the Receiving Party shall certify promptly in writing that it has done so.

## Section 6. LIMITED WARRANTY AND DISCLAIMER

**6.01 Limited Warranty.** UWS warrants that, for the term of this Agreement, that a) the UWS Products or Services will materially perform to the functional specifications in the Documentation. End User expressly agrees that UWS does not represent or warrant that the UWS Products or Services will meet the requirements of End User, that the UWS Products or Services will operate in the combinations which may be selected for use by the End User (unless such combination is contemplated by the Documentation or the reasonable and ordinary use of the Services), or that the use of the services will be uninterrupted or error free. No warranty, express or implied, is offered on UWS Products or Services that have been used without payment for access to those same UWS Products or Services. Third Party Software used to provide Services or third-party license shall be subject to any warranties UWS receives.

**6.02 Warranty Remedies.** In the event of a breach of the warranty set forth in Section 8.01 or upon the discovery of Malicious Code in the Services, End User's exclusive remedy and UWS's entire liability will be (a) to correct the non-conforming UWS Products or Services at no additional charge to End User, or (b) in the event UWS is unable to correct such deficiencies after good-faith efforts, UWS shall refund End User amounts paid that are attributable to the defective Services from the date UWS received such notice through the date of remedy, if any. To receive financial warranty remedies, End User must promptly report deficiencies in writing to UWS, but no later than thirty (30) days of the first date the deficiency is identified by End User, but End User's failure to notify UWS within such thirty (30) day period shall not affect End User's right to receive the remedy in Section 8.02(a) unless UWS is somehow unable, or impaired in its ability to, correct the deficiency due to End User's failure to notify UWS within the thirty (30) day period. Notice of breaches of the warranty in Section 8 shall be made through UWS's then-current error reporting system; notices of breaches of any other warranty shall be made in writing to UWS in accordance with the Notice provisions of this Agreement.

**6.03 Authority.** UWS further represents and warrants that: (i) it has the authority to enter into and perform under this MSA; (ii) it has the right to give End User the rights set forth in this MSA and in the License and Services; (iii) it has the right to provide any and all information, products, software and/or services under this MSA to End User, for use in performance of the of this MSA; and (iv) it has the right to grant any of the right to use the Licenses and Services provided under the terms of this MSA to End User.

**6.04 Disclaimer.** The warranties set forth in Sections 6.01 and 6.03 are the only warranties provided by UWS for the Services and UWS Products to the fullest extent possible under applicable law, and UWS disclaims, on behalf of itself and its licensors and resellers, all other warranties, conditions and representations express or implied, written or oral, statutory or otherwise, including without limitation, implied warranties or conditions (i) of merchantability, fitness for a particular purpose, accuracy, completeness, quality, title, non-infringement, or successful system integration or compatibility, (ii) that the licenses or services are error-free or secure, (iii) that use of the licenses or services will be secure or uninterrupted, (iv) arising from course of dealing, usage or trade practice, or (v) that the licenses or services will meet End User's requirements.

### 6.05 UWS Indemnity.

(a) Subject to 6.04, UWS will defend or settle any claim brought or allegation made against End User by a third party that Services or Documentation, or End User's use or deployment of the Licenses, Services or Documentation infringes upon, misappropriates or otherwise violates such party's trademark, copyright or patent valid in Canada, the United States or the United Kingdom. UWS' obligations under this section are subject to the conditions that End User (i) notifies UWS in writing of any such claim promptly upon learning of it (provided UWS' indemnification obligations hereunder shall only be lessened to the extent End User's failure to provide such notice materially impacts UWS' ability to defend against such claim) and allows UWS to have sole control of the defense and all related settlement negotiations, and (ii) cooperates with UWS, at UWS' expense, in defending or settling the claim. UWS has no obligation with respect to any settlement, payment or admission made, or cost or expense incurred, without UWS' prior written consent. This section states UWS' entire liability and End User's

exclusive remedy for any actual, threatened or alleged infringement claims, actions, suits, and proceedings relating to the subject matter of this MSA.

(b) UWS may, at its sole discretion, elect to defend, compromise, or settle the claim, in which event End User shall provide all reasonable available information, assistance, and authority to enable UWS to do so, provided UWS reimburses End User for reasonable and actual costs and expenses incurred in relation to such activity. End User may elect nonetheless to continue to defend those aspects of the action against End User that End User deems, in its sole discretion, to be necessary. In such event, UWS shall provide all reasonable available information, assistance, and authority to enable End User to do so, provided End User reimburses UWS for such activity, and further provided that UWS shall not be responsible for indemnifying End User for any damages, costs, or fees associated with such elected defense. End User shall have no authority to settle any claim on behalf of UWS.

(c) If UWS receives information about an infringement or misappropriation claim related to a Service or License, UWS may in its discretion and at no cost to End User (i) modify the License or Services so that they are no longer claimed to infringe or misappropriate, (ii) obtain a license for End User's continued use of that License or Service in accordance with this Agreement, or (iii) terminate End User's subscriptions for that License or Service upon 30 days' written notice and refund End User any prepaid fees covering the remainder of the term of the terminated subscriptions.

**6.06. Exceptions.** The defense and indemnification obligations in Section 6.05 do not apply if (1) the allegation does not state with specificity that the License or Services are the basis of the claim against the End User (2) a claim against the End User arises from the use or combination of the License or Services or any part thereof with software, hardware, data, or processes not provided by UWS, if the License or Services or use thereof would not infringe without such combination; (3) a claim against the End User arises from License or Services that have not been purchased; (4) a claim against the End User arises from modifications to the Services or Licenses not made by UWS or (5) a claim against the End User arises from a Non-UWS Application or End User's breach of this Agreement, the Documentation or applicable Order.

**6.07 Indemnification by End User.** End User will defend or settle any claim brought or allegation made against UWS or a UWS Affiliate by a third party (i) arising out of the combination, operation or use of the UWS Products or Services with any other item, (ii) arising out of the overlaying or other modifications by End User of third-party content; or (iii) based on use of the UWS Products or Services by or on behalf of End User after UWS has notified End User of its belief (supported by reasonable basis) that such activities may constitute an infringement of the intellectual property rights of a third party. End User's obligations under this section are subject to the conditions that UWS (i) notifies End User in writing of any such claim promptly upon learning of it (provided End User's indemnification obligations hereunder shall only be lessened to the extent UWS' failure to provide such notice materially impacts End User's ability to defend against such claim) and allows End User to have sole control of the defense and all related settlement negotiations, and (ii) cooperates with End User, at End User's expense, in defending or settling the claim. End User has no obligation with respect to any settlement, payment or admission made, or cost or expense incurred, without End User's prior written consent.

**6.08 Claims by Third Parties.** Neither party nor its affiliates will be liable for any claim against the other party by any third party, except as provided in Section 6.07.

**6.09 Third-Party Services.** The UWS Services or UWS Software may rely on or interact with third-party services, platforms, or infrastructure (collectively, "Third-Party Services"), including but not limited to cloud hosting providers, payment gateways, or APIs. These Third-Party Services are not owned, operated, or controlled by UWS, and their availability, functionality, and performance are outside of UWS's control.

UWS makes no representations or warranties, express or implied, regarding the availability, reliability, or functionality of any Third-Party Services. The use of the Software is contingent upon the availability and proper functioning of these Third-Party Services.

To the fullest extent permitted by law:

- UWS shall not be liable for any damages, losses, costs, or expenses arising from interruptions, failures, errors, or delays caused by Third-Party Services.
- This includes but is not limited to service outages, data loss, performance degradation, or security breaches attributable to such Third-Party Services.

## Section 7. **LIABILITY**

**7.01 Limitation of Liability.** To the maximum extent permitted by law and except with respect to (i) a party's confidentiality obligations in section 7, (ii) reckless misconduct, gross negligence, willful misconduct and/or fraud, (iii) a party's indemnification obligations under Section 8; or (iv) End User's payment obligations, (a) in no event shall either party's (or UWS's affiliates' or third party licensors') aggregate liability arising out of or related to this Agreement, whether in contract, tort or otherwise, exceed the fees actually paid or payable by End User under this Agreement during the immediately preceding twelve (12) month period for the Service from which the claim arose (or, for a claim arising before the first anniversary of the effective date, the amount paid or payable for the first twelve (12) month period) (b) UWS's aggregate liability for its breach of this Agreement (including the data processing exhibit) resulting in the unauthorized disclosure of End User data, or breach of its security, privacy and/or confidentiality obligations under this Agreement, shall not exceed the fees paid or payable by End User under this Agreement during the immediately preceding twenty-four (24) month period for the Service from which the claim arose (or, for a claim arising before the second anniversary of the effective date, the amount paid or payable for the first twenty-four (24) month period).

**7.02 Exclusion of Damages.** Except (a) with respect to amounts to be paid by either party pursuant to a court award (other than a default judgment) or settlement as well as the defense costs under the indemnification obligations no matter how such damages may be characterized,

(b) a breach of a party's confidentiality obligations under this Agreement; or (c) in the case of End User, a breach of its obligations under 3.05; in no event shall either party have any liability to the other party for any indirect, special, incidental, punitive, or consequential damages, however caused, or for any lost profits, loss of use, cost of data reconstruction, cost or procurement of substitute goods or services, whether in contract, tort or otherwise, arising out of, or in any way connected with the Service, including but not limited to the use or inability to use the Service, any interruption, inaccuracy, error or omission, even if the party from which damages are being sought or such party's licensors or subcontractors have been previously advised of the possibility of such loss or damages. End user will not assert that its payment obligations as set forth in an order form are excluded as UWS's lost profits.

**7.03 Limitation for Malicious Code.** UWS assumes no liability whatsoever or any responsibility for protection against any type of Malicious Code that is not specifically delivered to End User as part of the License or Services, specifically but not limited to:

(i) **Email Support.** End User is responsible for all email filtering, specifically including virus checking and SPAM filtering. In addition, End User is responsible for all archiving and backing up of all email messages that are processed by the System.

(ii) **Web Support.** End User is responsible for all protection against any Malicious Code that may be contracted by the opening or pushing of Web pages to either End User's System or from End User to its End Users.

(iii) **VoIP Support.** End User is responsible for all protection against any Malicious Code that may be contracted by the delivery of a Voice over IP ("VOIP") data packet to the End User System.

(iv) **Denial of Services attacks.**

(v) **Other Data Channels.** For End Users who use alternate data channels, specifically including but not limited to Chat, SMS, Social Media, WebRTC, Skype, What's App, Vido or Facebook, End User is responsible for all protection against any Malicious Code that may be delivered in any format via these data channels or as a result of these data channels usage.

## Section 8. INTELLECTUAL PROPERTY

**8.01 UWS Services and UWS Products.** End User agrees that all intellectual property, including without limitation any improvements, inventions, industrial designs, literary, artistic or musical works, computer programs and other creations, data, topographies, concerns and trade secrets, copyrights, trademark rights and patent rights (collectively, "Intellectual Property") embodied in the UWS Product or UWS Integrated Software used to provide the License or Services, is the exclusive property of UWS or its suppliers. UWS agrees that any pre-existing or independently created Intellectual Property owned by End User that is embodied in the Intellectual Property will remain the property of End User. End User grants to UWS a limited, non-exclusive right to access, use and modify any End User Intellectual Property solely to provide the License or Services under an applicable Order.

**8.02 UWS Integrated Software.** UWS and End User agree that, unless otherwise set forth in a mutually executed amendment to this MSA or an applicable Statement of Work, UWS will retain ownership of Intellectual Property rights in any UWS Integrated Software, excluding any Confidential Information or pre-existing Intellectual Property of End User.

## Section 9. TERM AND TERMINATION

**9.01 Subscription Term.** The term of each subscription shall be as specified in the applicable Order. The parties can elect to extend the subscription by entering into a new Order for a term of a minimum of one year. Where the parties elect not to enter into a new Order to extend the subscription, and the End User wishes to continue to use the UWS Products or Services, End User will pay UWS monthly for use of the software at a rate of 2x the monthly MSRP of the UWS Products or Service, until such time a new Order is entered into by the parties. Except as expressly provided in the applicable Order, renewal of promotional or one-time priced subscriptions will be at UWS's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any UWS Products or Services has changed from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**9.02 Termination.** This MSA and any license granted hereunder may be terminated by either party with written notice (email acceptable), if the other party:

i. breaches its obligations under Section 4 (Fees) or Section 5 (Confidentiality);

ii. materially breaches any other term of this MSA and fails to cure such breach within thirty (30) days following written notice from the terminating party;

iii. admits in writing its inability to pay its debts as they become due, applies for or consents to the appointment of a trustee, receiver, or other custodian, makes a general assignment for the benefit of its creditors, or initiates any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law; or

iv. becomes subject to any bankruptcy, dissolution or liquidation proceedings which are not dismissed or resolved within one-hundred twenty (120) days.

**9.03 Other Remedies and Consequences.** The termination or expiration of this MSA or any License or Service rights granted hereunder does not prevent or limit either party from pursuing any other remedy or remedies available to it at law or equity, including without limitation injunctive relief, nor does such termination or expiration relieve End User of any remaining obligation hereunder to pay amounts otherwise due to UWS. Except to the extent otherwise provided in this MSA, upon expiration or termination of this MSA for any reason, each party will promptly return or destroy (at their option) all copies of the other party's Confidential Information in such party's possession or control.



**9.04 Refund or Payment upon Termination.** If this Agreement is terminated by End User in accordance with the “Termination” section above, UWS will refund End User any prepaid fees covering the remainder of the term of any Order from the effective date of termination. If this Agreement is terminated by UWS in accordance with the “Termination” section above, End User will pay any unpaid fees covering the remainder of the term of all Orders to the extent permitted by applicable law. In no event will termination relieve End User of its obligation to pay any fees payable to UWS for the period prior to the effective date of termination.

**9.05 Effect of Termination.** Upon any termination of this Agreement, End User shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable UWS Products or Services (except as permitted under the section entitled “Retrieval of End User Data”) and UWS Confidential Information. Termination for any reason shall not relieve End User of the obligation to pay any fees accrued or due and payable to UWS prior to the effective date of termination and termination for any reason other than for UWS’s uncured material breach or the reasons set forth in Section 9.02 shall not relieve End User of the obligation to pay all future amounts due under all Order Forms.

**9.06 Retrieval of End User Data.** Upon written request by End User made prior to any expiration or termination of this Agreement, UWS will maintain any End User data contained within the Services for a thirty (30) day period beyond expiration or termination of this Agreement. UWS will have no obligation to maintain or provide any End User Data and shall thereafter, unless legally prohibited, delete all End User Data by deletion of End Users’s tenant or image; provided, however, that UWS will not be required to remove copies of the End User Data from its backup media and servers until such time as the backup copies are scheduled to be deleted, provided further that in all cases UWS will continue to protect the End User Data in accordance with this Agreement. The foregoing deletion obligation will be subject to any retention obligations imposed on UWS by law. Additionally, during the Term of the Agreement, End Users may extract End User Data using UWS’s standard web services.

**9.07 Surviving Provisions.** The following provisions of this Agreement shall not survive and will have no further force or effect following any termination or expiration of this Agreement: (i) subsection (i) of Section 2 “UWS Responsibilities”; (ii) Section 3 “Use of Services”; and (iii) any Order Form(s). All other provisions of this Agreement shall survive any termination or expiration of this Agreement.

## Section 10. MISCELLANEOUS

**10.01 Government Rights.** UWS provides License or Services which consist of “commercial items”, pursuant to FAR 2.101 (and any successor sections). In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights. The use of the Service by the United States of America and/or any of its instrumentalities, regardless of form (collectively “Government”) shall be governed by this MSA.

**10.02 Severability.** If any part of this MSA unenforceable because of any rule of law or public policy, such unenforceable provision shall be severed from this MSA, and this severance shall not affect the remainder of this MSA.

**10.03 Entire Agreement.** This MSA, including all exhibits, schedules and attachments, constitutes the entire agreement between the parties with respect to the subject matter of this MSA and supersedes all previous negotiations, proposals, commitments, and understandings of any nature whatsoever. There are no representations or warranties with respect to the subject matter of this MSA other than those expressed herein. No consent, modification or change of terms of this MSA shall bind either party unless in writing signed by both parties. The terms of this MSA and the licenses herein shall prevail notwithstanding any conflicting terms or legends which may appear on, with or in the UWS Products or Materials. In addition, any notices, legends, shrink-wrap, browser wrap, click wrap or other agreement or other terms, whether additional, different or inconsistent with those of this MSA, presented by UWS in connection with the UWS Products or Materials shall be void and of no effect even if presented or purportedly accepted after the date of this MSA and will not be considered an amendment to this MSA unless expressly set forth as such, in writing signed by both parties, and specifically referencing this MSA and the section(s) being modified.

**10.04 Waiver.** The failure of either party to insist in one or more instances upon strict performance of the covenants of this MSA, or to exercise any right or option herein contained, shall not be construed a waiver, or relinquishment for the future, and such covenant and/or right or option shall remain and continue in full force and effect. Any waiver shall be effective only if made in writing.

In addition, for End User’s using Upstream Works AI Models, the following waiver shall apply: AI Disclaimer and Contractual: [Accuracy, Limitations, and Potential Biases Regarding Use of Hugging Face AI Models](#).

**10.05 Orders.** Each Order shall form an integral part of this MSA. No terms contained in any Order (other than the Products and/or Services and associated quantities or durations listed therein), or any acceptance or confirmation or similar document issued by End User, shall be binding on the parties unless specifically agreed to in writing by both parties.

**10.06 Assignment.** This MSA and the License granted hereunder may not be assigned, sub licensed or otherwise transferred by either party under any circumstances whatsoever without prior written consent from the non-assigning party, except that: (a) End User may assign this MSA to an Affiliate; and (b) either party may assign this MSA in connection with a merger, reorganization or sale of all or substantially all of such party’s assets, provided that the surviving or acquiring entity is not a material competitor of the non-assigning party, the non-assigning party is notified of the transaction prior to the closing of the transaction, the surviving entity or purchase expressly assumes this MSA and Company’s obligations hereunder, and, if requested by the non-assigning party, acknowledges such assumption in writing to the non-assigning party. Any permitted assignee or any successor-in-interest of a party shall take assignment or assumption subject to all the terms and conditions of this

MSA. Any purported assignment of this MSA in contravention of this Section 10.06 shall be null and void and, without limiting any other rights or remedies available under this MSA, at law or in equity, the non-assigning party may immediately terminate this MSA without further liability.

**10.07 Governing Law and Dispute Resolution.** This MSA and all schedules shall be governed a) in accordance with the laws of the State of New York and the federal laws of the United States applicable therein if the Service is provided from within the United States, b) in accordance with the laws of the United Kingdom and Wales if the Service is provided from within the United Kingdom, Ireland or Continental Europe, or c) accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and the federal laws of Canada applicable therein if the Service is provided from within any other jurisdiction. Any trial by jury shall be waived by the parties to the greatest extent permitted by applicable laws.

**10.08 Notices.** All notices required hereunder relating to this Agreement shall be in writing and shall be deemed to have been given and received when delivered in person or upon receipt (or refusal) when mailed by registered or certified mail, return receipt requested, postage prepaid, or by End User Priority overnight delivery service, to the respective address first set forth above or as provided herein.

**10.09 Independent Contractors; Beneficiaries.** In performing their obligations, and exercising their rights, under this MSA, the parties shall be independent contractors, and neither shall have the authority to bind or act as agent for the other. No partnership, joint venture, or other business organization is created by this MSA. Except as otherwise expressly provided herein, there are no third-party beneficiaries of this MSA.

**10.10 English.** This MSA is in the English language only, which language is controlling in all respects, and no versions in any other language will be binding on the parties.

**10.11 Compliance with Laws.** Each of the parties will comply with all applicable laws and regulations. Without limitation, End User will not import, export, or re-export, directly or indirectly, any UWS Product to any country in violation of the laws and regulations of any applicable jurisdiction, including without limitation the United States of America. UWS represents and warrants that it is not required to obtain approvals from any governmental entity to execute this MSA or to perform its obligations hereunder.

**10.12 Severability, Waiver.** The invalidity or unenforceability of any provision of this MSA shall not affect the remaining provisions of this MSA, which will remain in full. No waiver of any default or breach of a provision hereof shall be binding unless in writing, nor shall the waiver of any default or breach affect a party's rights with respect to any other or future default or breach.

**10.13 Force Majeure.** Neither party will be liable for failure or delay in the performance of its obligations, other than payment of money, due to strike, riot, fire, flood, natural disaster, pandemic or other cause beyond such party's control, provided that such party gives prompt written notice of such condition to the other party and resumes its performance as soon as practicable. If either party's performance under this MSA is delayed for one-hundred and eighty (180) days or more, the other party may terminate this MSA.

**10.14 Cumulative Remedies.** Except as expressly indicated, no right or remedy conferred by this MSA is exclusive of any other right or remedy available at law or in equity.

**10.15 Interpretation.** Section headings are for convenience only and shall not be deemed to be part of this MSA. Use of the terms "hereunder", "herein", "hereby", and similar terms refer to this MSA.

**10.16 Execution.** This MSA may be signed in counterparts, each of which will be deemed an original, but all of which together will constitute a single instrument.

**10.17 Third Parties.** For parties located in the United Kingdom, except as expressly provided in this MSA, a person who is not a party to this MSA may not enforce any of its terms under the UK Contracts (Rights of Third Parties) Act 1999.

**10.18 Data Protection.** For parties located in the United Kingdom, each party must comply with all Data Protection Requirements that apply to it in relation to any personal data (as defined in the UK Data Protection Act 2018) processed in accordance with this MSA.

## SCHEDULE 1 – UPKEEP STANDARD SUPPORT

### Section 1. SUPPORT SERVICES

**1.01 Standard End User Support.** UWS agrees to provide and End User or Reseller agrees to accept software maintenance and support services as described in this schedule ("Standard UpKeep End User Support") on the UWS Products or Services provided to the End User.

Nothing in this Agreement shall impose an obligation on UWS to modify the UWS Service or to produce or release a new Version of the UWS Product.

Standard End User Support shall not include the following: (a) resolving software problems attributable to modifications or enhancements to the UWS Products not created by UWS as part of the supplied Services; (b) consulting services, including application design, training, installation, implementation, or customisation unless specifically outlined in this Agreement ; (c) resolving software problems attributable to third-party products or services not supplied by UWS, (d) resolving software problems attributable to the use of the Services in conjunction with computer systems or software not authorised or specified by UWS, (e) restoration of lost or corrupted data.

**1.02 Upgrades.** From time to time, UWS will enhance the Services at no charge to the End User, and will provide 30 days notice of any such upgrade or enhancement and the times of any resultant outages.

**1.03 Exclusions.** The support services listed herein do not cover changes to any integrated or customized software that are required for functional reasons or due to product upgrades (either UWS products or integrated products) across major releases.

1.04 **New Versions.** Nothing in this schedule or Agreement shall impose an obligation on UWS to modify the UWS Services or to produce or release a new Version of the Services.

## Section 2. **TERM**

2.01 **Start Date.** The term of this support services shall commence on the effective date of any subscription for Services and continue for the duration of that subscription term.

## Section 3. **WARRANTY**

3.01 **Warranty.** All services will be provided in a commercially reasonable manner; all service personnel will be sufficiently and adequately trained for the type of service they are providing. Unless otherwise stated in this document, UWS offers no warranty express or implied, including, but not limited to, implied warranties or conditions of merchantable quality and fitness for a particular purpose, warranties with respect to response times or problem resolution and warranties arising by statute or otherwise in law or from a course of dealing or usage of trade, with respect to these support services.

## Section 4. **SEVERITY DEFINITIONS**

Severity 1 (S1) means an error isolated to the UWS Service in a production environment that renders the Service inoperative or causes the Service to fail catastrophically; e.g., critical system impact; system down, as determined by UWS.

Severity 2 (S2) means an error isolated to the UWS Service in a production environment where the Service's operations are severely degraded or significant aspects of the UWS Service are not performing with significant business impact.

Severity 3 (S3) means an error isolated to UWS Service in a production environment where most business functions remain operational.

Severity 4 (S4) means any issue related to the UWS Service that require additional information or a system error where there is no specific impact on service.

Severity is determined by UWS, in its sole opinion.

## Section 5. **PROBLEM REPORTING**

5.01 **Severity.** 1 Reporting UWS will provide 24x7 availability to qualified support technicians for Severity 1 issues. Severity 1 issues must be reported by phone to the appropriate support line. Problems can be reported by phone to +1 (905) 660 0969 ext 1.

5.02 **Other Issues.** UWS will provide support services during business hours. Severity 2-4 issues may be reported via email or via the UWS Support portal, and will be responded to during the hours listed below. Support is provided during Canadian Business Days only:

Mon to Fri, Business Days	9AM to 5PM Eastern Time	All times listed are Eastern Time
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5.03 **End User Responsibility.** End User agrees to cooperate and work closely with UWS Support personnel to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to End User's approval on a case-by-case basis, End Users may be asked to provide remote access to their Services instance account and/or desktop system for troubleshooting purposes.

5.04 **Named Users.** End User shall provide up to two named users for any problem reporting. Only these individuals are eligible to report issues to UWS.

## Section 6. **RESPONSE TIMES**

6.01 **Response to a problem report** – 1 hour or less for Severity 1 issues reported via phone. This response may determine the level of the problem being reported is not Severity 1.

Resolution of a problem report. For problems that are recurring, UWS will provide a resolution or workaround to any S1 problem within 24 hours of the problems reporting, or provide best efforts to provide a resolution as quickly thereafter as is possible. For problems with infrequent manifestations, UWS will provide a resolution within 6 problem cycles of the problem's reporting.

6.02 **Remedy for Missed Response Times.** In the event that UWS does not meet its contracted response times for Severity 1 issues, End User shall have the right to escalate directly to UWS management and seek the following remedies:

Ongoing written status reports from UWS' management as to progress on the specific problem in question at a frequency as defined by End User.

Ongoing verbal status reports via conference call from UWS management as to progress on the specific problem in question at a frequency as defined by the End User.

## Section 7. **EXCLUDED ITEMS**

Standard support services do not include:

- i. Moves, adds and changes;
- ii. Assistance in developing User-specific customizations;
- iii. Assistance with non-UWS products, services or technologies, including implementation, administration or usage;

iv. Assistance with installation or configuration of third party components, including but not limited to voice recording, AI/Chatbots, telephony issues, or other adjunct related applications or hardware;

v. Any software that is developed on a 'per diem' basis is delivered 'as is' and is not covered under the terms of this agreement.

## Section 8. **CHANGES**

UWS can change the terms of the standard End User support with 30 days notice anytime, at its sole discretion.

## SCHEDULE 2 – **UPKEEP ENTERPRISE SUPPORT**

### Section 1. **ENTERPRISE SUPPORT SERVICES**

**1.01 UpKeep Enterprise Support.** UWS agrees to provide and End User or Reseller agrees to accept software maintenance and support services as described in this schedule ("UpKeep Enterprise Support") on the UWS Services provided to the End User.

Nothing in this Agreement shall impose an obligation on UWS to modify the UWS Service or to produce or release a new Version of the UWS Product.

Standard End User Support shall not include the following: (a) resolving software problems attributable to modifications or enhancements to the UWS Products not created by UWS as part of the supplied Services; (b) consulting services, including application design, training, installation, implementation, or customisation unless specifically outlined in this Agreement ; (c) resolving software problems attributable to third-party products or services not supplied by UWS, (d) resolving software problems attributable to the use of the Services in conjunction with computer systems or software not authorised or specified by UWS, (e) recreation of lost or corrupted data

**1.02 Upgrades.** From time to time, UWS will enhance the Services to the End User, and will provide 30 days notice of the availability of any such upgrade or enhancement. End Users with Enterprise UpKeep Customer Support may schedule a mutually agreed upon time with UWS for UWS to perform a upgrades UWS within 6 months of the release of a new feature. Service upgrades are provided at no additional charge; however charges may be levied to account for any customized or integrated software components in use by the End User. End User will be notified of all charges associated with an upgrade, and End User approval must be provided prior to any work being done. In cases where additional services are required, End Users will be required to upgrade within 12 months of the availability of the new feature or release. Should the End User not upgrade within the agreed period, UWS will provide the End User with 30 days notice of such upgrade and proceed with the upgrade at its convenience.

UWS shall have no obligations with respect to Services which have been altered by any party other than UWS without the prior written consent of UWS, or has been used otherwise than as provided in the governing MSA or has not been used or stored in accordance with the instructions contained in the relative documentation.

**1.03 Response Time.** UWS will respond to all Support calls within 1 hour, 7x24. Our typical response time is within 15 minutes. Problems must be reported by phone for guaranteed response times.

**1.04 Sandbox Systems.** UWS will provide one 6 CAL license of the UWS Services for active, non-production use on a non-production VPC. Services can be used for demonstration, development, training or testing purposes. Set up and configuration of this system by UWS personnel is not included in these fees.

**1.05 Scheduled Green Zone Support** – UWS will provide resources for afterhours support during prescheduled maintenance windows. Extra costs may be incurred for support of third party upgrades that may impact the UWS Services.

**1.06 Integration and Customized Software Support** – Upstream Works will support integrated or customized software that has been provided to an End User by Upstream Works as long as it is operating on a supported release of Upstream Works software, and is covered under a valid UES Agreement. Changes required to integrated or customized software as a result of system changes due to UWS or third party upgrades are not included. Upstream Works will also maintain all integrated software in an industry standard source and version control system at its premises. UWS will maintain the source code for any integrated or customized software under UES at its facilities under source control for End User.

**1.07 Time and Materials Support.** Any software developed on a 'per diem' basis is delivered 'as is' and is not covered under the terms of this agreement.

**1.08 Exclusions.** The support services listed herein do not cover changes to any integrated or customized software that are required for functional reasons or due to product upgrades (either UWS products or integrated products) across major releases.

**1.09 Versions.** Nothing in this schedule or Agreement shall impose an obligation on UWS to modify the UWS Services or to produce or release a new Version of the Services.

UWS shall not include the following: (a) resolving software problems attributable to modifications or enhancements to the Products not created by UWS as part of the supplied Services; (b) consulting services, including application design, training, installation, implementation, or customisation unless specifically outlined in this schedule; and (c) resolving software problems attributable to the operation of the Services in conjunction with computer systems or software not authorised or specified by UWS.

## Section 2. **TERM**

**2.01 Start Date.** The term of this support services shall commence on the effective date of any subscription for Services and continue for the

duration of that subscription term.

### Section 3. **WARRANTY**

3.01 All services will be provided in a commercially reasonable manner; all service personnel will be sufficiently and adequately trained for the type of service they are providing. Unless otherwise stated in this document, UWS offers no warranty express or implied, including, but not limited to, implied warranties or conditions of merchantable quality and fitness for a particular purpose, warranties with respect to response times or problem resolution and warranties arising by statute or otherwise in law or from a course of dealing or usage of trade, with respect to these support services.

### Section 4. **SEVERITY DEFINITIONS**

Severity 1 (S1) means an error isolated to the UWS Service in a production environment that renders the Service inoperative or causes the Service to fail catastrophically; e.g., critical system impact; system down, as determined by UWS.

Severity 2 (S2) means an error isolated to the UWS Service in a production environment where the Service's operations are severely degraded or significant aspects of the UWS Service are not performing with significant business impact.

Severity 3 (S3) means an error isolated to UWS Service in a production environment where most business functions remain operational.

Severity 4 (S4) means any issue related to the UWS Service that require additional information or a system error where there is no specific impact on service.

Severity is determined by UWS, in its sole opinion.

### Section 5. **PROBLEM REPORTING**

5.01 Severity 1 Reporting UWS will provide 24x7 availability to qualified support technicians for Severity 1 and Severity 2 issues. Severity 1 and Severity 2 issues must be reported by phone to the appropriate support line. Problems can be reported by phone to +1 (905) 660 0969 ext 1 for response time guarantees.

Severity 3 and 4 issues can be reported Canadian Business Days from 4 AM to 5 PM Eastern Time

Problems can be reported by phone to +1 (905) 660 0969 ext 1 or via email to [support@upstreamworks.com](mailto:support@upstreamworks.com), or via the Upstream Works support portal. Sev 1 and Sev 2 after hours problems must be reported by phone for response time guarantees. Severity 3 and 4 support is provided during Canadian Business Days only:

Mon to Fri, Business Days	4AM to 5PM Eastern Time	All times listed are Eastern Time
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5.02 **End User Responsibility.** End User agrees to cooperate and work closely with UWS Support personnel to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to End User's approval on a case-by-case basis, End Users may be asked to provide remote access to their Services instance account and/or desktop system for troubleshooting purposes.

5.03 **Named Users.** End User shall provide up to five named users for any problem reporting. Only these individuals are eligible to report issues to UWS.

5.04 **Customized Software.** Support of Integrated or Customized Software

i. Customized by UWS. If the system includes customized software developed for End User by UWS, and UES has been purchased for such customized software, UWS warrants that software will operate as per specification and will repair any defects as per the terms of this schedule. As part of this Agreement, UWS will maintain the integrated source code at its facilities under source control for End User. For software developed jointly by End User and UWS, UWS shall support the portions of software implemented by UWS.

ii. Customized by "Approved Developers". If the system includes customized software developed by an End User "Approved Developer", then UWS will support all UWS-supplied components up to the UWS programming API. An "Approved Developer" is one who meets the minimum pre-requisites for using UWS integration toolkits and had taken UWS "Approved Developer Training". UWS makes no representations or warranties for support of customized software developed by End User and makes no response time guarantees for any problems reported as a result. UWS will, if requested, provide 'per diem' assistance in trouble shooting End User customization problems.

iii. Other Customizations If customized software is developed by non-Approved End Users, End User will be responsible for providing positive proof that the reported non-conformance is a result of the UWS products. The validity of 'positive proof' is in the opinion of UWS staff. UWS will provide support to End User for UWS-supplied components that interact with the End User developed software on a 'per diem' basis only. If UWS, in its sole opinion, believes that the reported problem is not related to the End User Customization, then it will provide support as per the general terms of this Agreement for its products. UWS makes no representations or warranties for support of a system using customized software developed by non-Approved End Users and makes no response time guarantees for any problems reported as a result.

iv. Support Restrictions To support any customized software, UWS must (a) maintain the complete source code for the customization and have free and complete access to the software for purposes of providing warranty and support, or (b) maintain a unique Image ID for the executable software module containing the customization, consisting of a date and file size, executable software checksum, or some other uniquely identifying mark, and have remote access to a debug system containing the full source and compile system sufficient to debug and support the software. In the case of b), response times are measured from the time UWS is provided access to this system. If the executable



customized software module does not match the source maintained by UWS due to end use changes, or if the Image ID does not match that maintained and certified by UWS, then the software will be supported as per 5.04(iii) above.

Restrictions. UWS reserves the right to deprecate any APIs that are used for integrations by providing a minimum of 9 months notice to the End User of such change.

## Section 6. **RESPONSE TIMES**

6.01 **Response to a problem report** – 1 hour or less for Severity 1 issues reported via phone. This response may determine the level of the problem being reported is not Severity 1.

Resolution of a problem report. For problems that are recurring, UWS will provide a resolution or workaround to any S1 problem within 24 hours of the problems reporting, or provide best efforts to provide a resolution as quickly thereafter as is possible. For problems with infrequent manifestations, UWS will provide a resolution within 6 problem cycles of the problem's reporting.

For S2 problems, UWS will endeavor to recreate the problem within 5 business days of the problems reporting. A resolution will then be provided as part of an engineering release upgrade.

S3 problems will be resolved as quickly as possible on a best-efforts basis.

S4 problems will be resolved in a future scheduled maintenance release of the software, not to exceed 24 months from the reporting date of the problem.

6.02 Remedy for Missed Response Times. In the event that UWS does not meet its contracted response times, End User shall have the right to escalate directly to UWS management and seek the following remedies:

Ongoing written status reports from UWS' management as to progress on the specific problem in question at a frequency as defined by End User.

Ongoing verbal status reports via conference call from UWS management as to progress on the specific problem in question at a frequency as defined by the End User.

## Section 7. **EXCLUDED ITEMS**

Standard support services do not include:

- i. Moves, adds and changes;
- ii. Assistance in developing User-specific customizations;
- iii. Assistance with non-UWS products, services or technologies, including implementation, administration or usage;
- iv. Assistance with installation or configuration of third party components, including but not limited to voice recording, AI/Chatbots, telephony issues, or other adjunct related applications or hardware;
- v. Any software that is developed on a 'per diem' basis is delivered 'as is' and is not covered under the terms of this agreement.

## Section 8. **CHANGES**

UWS can change the terms of the Enterprise or Standard End User support with 30 days notice anytime, at its sole discretion.

*Updated: April 08, 2025*