AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 6.3.2024

Meeting Date: 6.10.2024

Submitted By: Lance Anderson

Department: Purchasing Department

Signature of Elected Official/Department Head:

Court Decision:
This section to be completed by County Judge's Office

Johnson County
Commissioners Court
★ APPROVED ★

June 10, 2024

Description:

Consider and approve with authorization for the County Judge to sign - Quote for 250,000 Document Management in the amount of $21,649.98 for 36 months with Access Imaging Solutions, LLC, Master Service Agreement and Addendum to Agreement.

(May attach additional sheets if necessary)

Person to Present: Patty Bougeois

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) ☑ PUBLIC ☐ CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

☑ Action Item ☐ Consent ☐ Workshop ☐ Executive ☐ Other _____

Check All Departments That Have Been Notified:

☑ County Attorney ☐ IT ☐ Purchasing ☐ Auditor

☐ Personnel ☐ Public Works ☐ Facilities Management

Other Department/Official (list) Elections

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

Approved in CC on 9/11/2023

Access Imaging Solutions, LLC
4224 Centergate St, San Antonio TX
78217
United States
Phone:210-590-8338

www.AccessImagingSolutions.com

Quote Number:	2024-JohTX-002
Quote Date:	02/28/2024
Quote Expires On:	06/28/2024
Proposed By:	Aaron C Emery
Email:	aemery@accessimagingsolutions.com

Customer: JOHNSON COUNTY ELECTIONS OFFICE

Customer Number: 001-JohTX

Ship To:
103 S Walnut St.
Cleburne, TX 76033

Bill To:
103 S Walnut St.
Cleburne, TX 76033

United States

Primary Contact: Patty Bourgeois

Primary Phone: 817-556-6197
Billing Currency: USD

Start Date: 5/31/2024   **End Date:** 5/30/2027   **Product Billing Frequency:** **Annual**

Payment Terms: Net 30

	Quality Unit of Measure	Net Unit Price	Term (Months)	Annual Amount	Extended Prince for Full Term
FileBound: JohnsonTX.FileBound.Com - 250,000 Document Management	1 Units Per Month	$601.38	36.00	$ 7,216.65	$21,649.98
FileBound: Importer Pro Subscription - included with subscription	1 Each	$ 0.00	36.00	$ 0.00	$ 0.00
FileBound: FileBound Capture Subscription - included with subscription	3 Each	$ 0.00	36.00	$ 0.00	$ 0.00
Total:				$ 7,216.65	$21,649.98

Total:	USD 21,649.98

1. **Binding Effect.** Customer and Upland are entering into this sales order or quote ("Sales Order") subject to the terms of the Master Services Agreement ("MSA") currently in effect between the parties as of the date this Sales Order is signed (this Sales Order together with the MSA, the "Agreement"). In the event there is no MSA currently in effect, then the applicable terms and conditions of the Master Services Agreement hosted at http://www.uplandsoftware.com/terms-of-service.pdf shall control. Capitalized terms not defined in this Sales Order have the meaning ascribed to them elsewhere in the Agreement.

2. **Non-Waiver.** For record-keeping purposes and the convenience of its Customers, in advance of the expiry of this Sales Order Upland may provide Customer with an updated Sales Order detailing the Services to be supplied by Upland upon renewal. For the avoidance of doubt, the parties acknowledge and agree that Upland's provision of such an updated Sales Order shall not constitute Upland's notice of (i) its intention not to renew the Agreement, or (ii) its intention to terminate the Agreement.

3. **Fees.** Customer agrees to pay any and all fees provided herein. Prices quoted are exclusive of any applicable taxes. All subscription fees hereunder shall be invoiced in advance and are due and payable in accordance with the Payment Terms set forth above. Customer acknowledges that fees for renewal periods shall be invoiced in advance and are due on or before the start date of such renewal period.

4. **Professional Services Fees.** Fees prepaid for Professional Services become non-refundable and are earned upon the earlier of: (i) the date the Professional Services are delivered (on a *pro-rata*, ongoing basis); or (ii) one year from the date of the applicable invoice.

Access Imaging Solutions, LLC
4224 Centergate St, San Antonio TX
78217
United States
Phone:210-590-8338

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Quote Number:	2024-JohTX-002
Quote Date:	02/28/2024
Quote Expires On:	06/28/2024
Proposed By:	Aaron C Emery
Email:	aemery@accessimagingsolutions.com

BY AFFIXING THE SIGNATURE OF THE AUTHORIZED REPRESENTATIVE OF THE CUSTOMER TO THIS QUOTE, BY HAND OR ELECTRONICALLY, CUSTOMER IS AGREEING TO BE BOUND BY THE TERMS OF THE AGREEMENT

Name (Print): Christopher Boedeker

Date: June 10, 2024

Title: County Judge

Signature: _(signature)_

Customer:

If a Purchase Order is required for the purchase or payment of the items on this Sales Order, please complete the following:
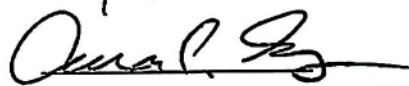
PO Number:

PO Amount:

AIS Signature

Name (Print): Aaron C. Emery

Date: 6/3/2024

Title: C.O.O.

Signature: _(signature)_

THANK YOU FOR YOUR BUSINESS!

This Master Services Agreement, including each Schedule and attachment hereto (collectively, the "**MSA**"), is between Customer (as identified in a Sales Order made subject to this MSA) 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 MSA, and upon execution by the parties, each such Sales Order shall be made subject to this MSA (each Sales Order together this MSA, an "**Agreement**"). The Agreement is effective as of the date the first such Sales Order was agreed to by the parties (the "**Effective Date**"). By agreeing to a Sales Order made subject to this MSA, 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 MSA. 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 MSA, 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. "**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.

1.5. "**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).

1.6. "**Enhanced Support Services**" has the meaning set forth in the applicable Schedule.

1.7. "**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 MSA and the applicable Sales Order (*e.g.*, numbers of Users, volume of messages, the Subscription Term, *etc.*).

1.8. "**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.

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

1.10. "**Personal Data**" means any information relating to an identified or identifiable natural person.

1.11. "**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.

1.12. "**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 MSA and as detailed in a Sales Order.

1.13. "**Sales Order**" means any mutually agreed, written sales order, statement of work or similar document referencing and made subject to this MSA, executed on behalf of Upland and Customer, 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 MSA as detailed in the preamble, above.

1.14. "**Schedule**" means the document attached hereto and identified as a "Schedule" which supplements this MSA 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 MSA as if such terms were fully set forth herein.

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

1.16. "**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.

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

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

1.19. "**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.

1.20. "**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.

1.21. "**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.

1.22. "**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. 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 MSA 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.

4.2. 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.

4.3. 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 MSA.

4.4. <u>Disputed Invoices</u>. 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.

4.5. <u>Late Payments</u>. 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.

4.6. <u>Taxes</u>. 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. <u>Agreement Term</u>. This MSA 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. <u>Subscription Term</u>. 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. <u>Termination for Breach</u>. 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. <u>Termination for Convenience</u>. 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. <u>Suspension for Critical Threats</u>. 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. <u>Transition Assistance</u>. 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. <u>Survival</u>. 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 of expiration of the Agreement.

6. CONFIDENTIAL INFORMATION

6.1. <u>Restrictions on Use and Disclosure</u>. 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. <u>Exclusions</u>. 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. <u>Disclosure Required by Law</u>. 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. <u>Independent Development</u>. 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. <u>Return or Destruction</u>. 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. <u>Regulatory and Compliance Matters</u>. 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. <u>Regulator Inquiries and Court Orders</u>. 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. <u>Audits and Security Assessments</u>. 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 MSA; (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. <u>Data Security</u>. 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. <u>Breach Notification</u>. 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 MSA, 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 MSA, 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 MSA 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 MSA 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 MSA 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

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 MSA, 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 MSA, 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 MSA and any Sales Order, the terms and conditions of this MSA 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. <u>Third Parties</u>. 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.

This On-Premise Perpetual License Schedule, together with its exhibits reference herein, supplements the Master Services Agreement 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 use such Services and Applications. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased licenses to an Application made available by Upland on a perpetual basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. PROVISION OF THE SERVICES

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

1.2. <u>Use of the Application and Documentation</u>. 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 perpetual, non-exclusive, non-transferable (except as otherwise provided in the Agreement), non-sublicensable, royalty-free, worldwide, license to install and use licensed copies of the Application solely in connection with Customer's internal business operations in ordinary course of Customer's business. Upland reserves all other rights not expressly granted in the Agreement.

1.3. <u>Use Limitations</u>. 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

1.4. <u>Usage Audit</u>. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Application. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five business days of any written request, so long as no more than two requests are made each year. Customer shall permit Upland to audit Customer's use of the Application. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Application, Customer shall pay to Upland an amount equal to such underpayment within 10 business days of the date of the relevant audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5. <u>Delivery</u>. An Application will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the applicable Application or has otherwise delivered the applicable Application to Customer. In the event the Application requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses it has purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

2. MAINTENANCE AND SUPPORT SERVICES

In connection with Customer's purchases of Application licenses, Customer may elect to purchase Support Services to be provided by Upland on a subscription basis. In such event, Upland shall provide such Support Services to Customer as further detailed in the Subscription-Based Maintenance and Support Schedule attached to the MSA and the applicable Sales Order.

3. CUSTOMER'S RESPONSIBILITIES

3.1. <u>Compliance and Use</u>. 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. <u>Use Restrictions</u>. 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

3.2.2. attempt to reverse compile, disassemble, reverse engineer, or attempt to discern the source code or otherwise reduce to human-perceivable form all or any part of the Application;

3.2.3. 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;

3.2.4. 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;

3.2.5. attempt to gain unauthorized access to the Application, Upland systems or networks, or otherwise circumvent or disable any security or other technological features or measures of the Application;

3.2.6. 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;

3.2.7. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in violation of third-party privacy rights;

3.2.8. knowingly use the Application to store or transmit Viruses or other malicious code;

3.2.9. knowingly interfere with or disrupt the integrity or performance of the Application; or

3.2.10. alter or remove any copyright notice or other proprietary rights notices that may appear on the Application or Documentation.

3.3.   Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit A**, attached hereto and incorporated herein by reference, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit A is not attached to this Schedule, no such additional terms and conditions shall apply.

3.4.   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
Product-Specific Terms

These Product-Specific Terms are made a part of and incorporated into the terms of the On-Premise Perpetual License Schedule to which this Exhibit A attached. All capitalized terms not defined herein shall have the meaning ascribed to them elsewhere in the Agreement.

UPLAND RIGHTANSWERS APPLICATION:
Where Customer enters into a Sales Order for the purchase Upland's RightAnswers Application, the following additional terms and conditions shall govern such use:

1. **Third Party Licenses**. The Application includes certain third party and other code, including, but not limited to, free and open source software (collectively, "Other Code") covered by other licenses ("Third Party Licenses"), as identified in the Third Party and Open Source Code License Terms available at https://uplandsoftware.com/rightanswers/rightanswers-license-agreements/, all as may be revised by Upland from time to time. Customer's license to the Other Code is subject to the terms of this MSA. Upland agrees to update the list of Other Code on the Website as required from time to time.

2. **Authorization.** Upland may, in its sole discretion, provide links in the Application to other sites on the Internet for the convenience of its users. These sites have not been reviewed by Upland and are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such site and for Customer's usage of such content. Upland is not responsible for the availability of such sites and does not endorse such sites.

This Subscription-Based Maintenance and Support Schedule, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which: (1) Upland will make available subscription-based Support Services for Upland Applications which Upland has licensed to Customer on a perpetual basis; and (2) Customer will be permitted to access and use such Support Services. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased Support Services on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1. "**Defect**" means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation.

1.2. "**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.

1.3. "**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.

2. SERVICE LEVELS

2.1. Standard Support Services. During the Subscription Term detailed on the applicable Sales Order and otherwise subject to Customer's compliance with the Agreement, Upland shall provide Support Services to Customer as detailed in Section 3 (*Standard Maintenance and Support Terms*), 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 set forth in Section 3 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 the Standard Maintenance and Support Terms and Conditions detailed in Section 3, subject to additional fees as agreed by the parties in a Sales Order.

3. STANDARD MAINTENANCE AND SUPPORT TERMS

3.1. Annual Application Maintenance. Upland shall use commercially reasonable efforts to maintain the Application so that it operates without Defects.

3.2. Updates. Upland shall supply Customer with Updates for the Application that is released to the general customer base during the Subscription Term. Such Updates may be accessed by Customer at no additional charge. Except for Updates, Customer shall not be entitled to any other software as part of any level of maintenance and support.

3.3. Bulletins. From time to time, at its sole discretion, Upland may publish bulletins containing information about Updates and other Upland news.

3.4. Application Support.

3.4.1. "Support" Defined. Support shall consist of internet assistance to Customer with respect to use of the Application and to resolve Defects through access to a website that may include any of the following: a knowledge base, online case tracking, frequently asked questions, Updates, and Documentation. Support will be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays. Unless otherwise designated by Upland, Customer should access the website described on the Sales Order.

3.4.2. Submission of Issues for Resolution. Customer shall submit to Upland the following information: (a) Customer contact information; (b) Application version; and (c) a complete description of the Defect and Customer-specific Application environment. If applicable, Customer shall also provide access to the Customer's Application environment so the Defect may be replicated.

3.4.3. Problem Definition. Customer shall record the following information for reference and provide it to Upland: (a) error messages and indications that Customer received when the malfunction occurred; (b) what the user was doing when the malfunction occurred; (c) what steps Customer has taken to reproduce the malfunction; (d) what steps Customer may have already taken to solve the problem; and (e) system logging

3.5. Severity Classification. Defects in the Application are classified according to severity of impact on the use of the Application, according to the chart below. All disputes regarding severity classification will be resolved by Upland in its sole discretion.

Severity	Impact
1	Production system Defect that prevents business critical work from being done, no Workaround exists, and Defect impacts most Users; or Defect causes a material loss of Customer Data in production system; or Security-related Defect.
2	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.
3	All other Defects.

3.6. Response Time Goals. Upland agrees to use commercially reasonable efforts to (i) acknowledge Defects reported to Upland by Customer on Upland's problem reporting form (which, in the event of a Severity 1, such acknowledgement will occur within one business day of receipt of the notice of the Defect and categorization of the Defect as a Severity 1) and (ii) provide Workarounds. Acknowledgements will be sent to Customer via email. The following response time goals will be in effect:

3.6.1. Severity 1. If a Severity 1 Defect occurs during normal operating hours (9:00 am to 6:00 pm U.S. Eastern Time weekdays), Upland will begin immediate and continuous efforts to reproduce and resolve the Defect and will carry out those efforts until the Defect is resolved. Upland will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible and will review status with Customer on a daily basis or more frequently, if requested.

3.6.2. Severity 2. If the Defect is a Severity 2 issue, Upland will begin efforts to reproduce the problem no later than the opening of the next business day after receipt of the issue by Customer. Upland will use reasonable efforts to resolve Severity 2 problems as rapidly as practical, but no later than the next Update after reproduction of the Defect.

3.6.3. Severity 3. Severity 3 Defects will be addressed in Upland's normal Update.

3.7. Inclusion. For the avoidance of doubt, the parties acknowledge and agree that each Workaround and Update shall be deemed to be a derivative work of the Application.

2. ADDITIONAL SERVICES.

2.1. Coverage. For an additional fee, Customer may elect to receive certain additional services, including, with respect to the Application, training, customization, on-site support and maintenance, and consulting services related to defects caused by issues other than the Application. Fees related to such services will be described in a Sales Order signed by both parties and will be provided by Upland at the fee stated therein, or if no fee is stated, at Upland's standard rate for equivalent services in effect at the time such Sales Order is executed. For the avoidance of doubt, where any additional services are explicitly included in the maintenance and support service level selected by Customer on the applicable Sales Order, then such additional services do not require payment of additional fees.

2.2. Out-of-Pocket Expenses. Customer shall pay all reasonable out-of-pocket expenses incurred by Upland, including costs for meals, lodging and travel related to additional support services.

3. OBLIGATIONS OF CUSTOMER.

3.1. First Level Support/Single Point of Contact. All communications relating to the 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.

3.2. Pre-Call Procedures. Prior to requesting support 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 true before contacting Upland for support:

3.2.1. Reproduction. If possible, the situation giving rise to the Defect is reproducible in a single supported Application;

3.2.2. 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;

3.2.3. Access. The entire system, including all software and hardware, is available to the Customer contact without limit during any telephone discussions with Upland support personnel; and

3.2.4. Cooperation. The Customer contact will follow the instructions and suggestions of Upland's support personnel when servicing the Application.

3.3. Remote Connection. If appropriate, Customer will 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 data.

3.4. Updates. Customer acknowledges and agrees that Updates provided by Upland pursuant to this Subscription Support Schedule may, in Upland's sole discretion, require additional training of Customer's personnel. Such training shall be performed in accordance with Section 3 (*Professional Services*) of the MSA.

3.5. Disclaimer. Upland shall not be responsible to provide the 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; (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 Subscription Support Schedule or the applicable license agreement.

4. LIMITATIONS ON MAINTENANCE AND SUPPORT SERVICES.

4.1. 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 terms of this Subscription Support Schedule or the applicable license agreement (as opposed to a Defect in the Application), the resolution of such problem is not covered by the Support Services. However, Upland may provide Professional Services to correct the problem pursuant to Section 3 (*Professional Services*) of the MSA.

4.2. 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. Major release upgrades are not included in the Fee and must be purchased separately. Other versions of the Application will not be supported unless Upland and Customer mutually agree otherwise in writing. Customer acknowledges that Upland's obligations hereunder apply only to production versions of the Application.

4.3. Third Party Products. The parties acknowledge and agree that the Support Services shall not support with regard to the operation or use of: (i) third-party hardware or software; or (ii) the Application, as modified by any party other than Upland; or (iii) the Application, as used in any manner in violation of the MSA,

the applicable license agreement, or inconsistent with the Documentation.

5. MISCELLANEOUS.

5.1. <u>Customer Facilities</u>. To the extent required by Upland, Customer will, upon request, promptly make available to Upland certain of its facilities, computer resources, software programs, networks, personnel, and business information as are required to perform any service or obligation hereunder. Upland agrees to comply with Customer's rules and regulations regarding safety, security, and conduct, provided Upland has been made aware of such rules and regulations.

This Software-as-a-Service Schedule, together with its exhibits, supplements the Master Services Agreement 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 MSA 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. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit B**, attached hereto, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit B is not attached to this Schedule, no such additional terms and conditions shall apply.

3.4. 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 MSA (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 MSA 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 MSA.

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.   **<u>Recovery Objectives</u>**. Upland shall maintain a recovery time objective of 24 hours and recovery point objective of 4 hours.

6.   **<u>Definitions</u>**:

    i.   "**Defect**" means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the MSA 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

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

UPLAND BLUEVENN APPLICATION:

Where Customer enters into a Sales Order for the purchase of Upland's BlueVenn Application or related Services, the following additional terms and conditions shall apply in respect of Customer's use:

1. Definitions. As used in this Exhibit B and as may be used in any Sales Order made subject to the terms of this MSA:

    1.1. "Unique Contacts" means those individuals whose details are stored in the Application and who have transacted with Customer or its Affiliates at any time within the previous thirty-six (36) calendar months;

    1.2. "Unique Contact Records" or "UCRs" means the total number of unique contacts in the Application comprising Unique Contacts and Unique Prospective Contacts, where the ratio of Unique Contacts and Unique Prospective Contacts to Unique Contact Records is as set out in the Sales Order;

    1.3. "Unique Prospective Contacts" means those individuals whose details are stored in the Application, but do not otherwise meet the definition of a Unique Contact, as provided in Section 1.1, above; and

    1.4. "Source System" means the software program, platform or database containing Customer Data, and which is (i) specified by Customer, and (ii) connected to the Application for the purpose of enabling the Application to perform data management operations upon such Customer Data.

2. Source Systems. In respect of any Source System which is not provided by Upland, Customer acknowledges that the Application needs to be compatible with such Source System in order to perform at maximum functionality. Upland shall not be held liable if such Source System fails to function with the Application. Customer acknowledges that it is responsible for ensuring that Customer's use of the Application does not cause the Customer to breach the terms agreed between Customer and any third party supplying such Source System. Customer shall indemnify Upland in full against all loss, damages, costs, expenses and other liability suffered or incurred by Upland in relation to Customer's breach of such terms.

3. Additional Use Restrictions. In respect of Customer's use of the Application, Customer shall:

    3.1. implement appropriate controls to ensure that the Application is not being used or operated in contravention of any applicable laws or codes of practice, codes of conduct, guidance or notices issued by any regulatory body with authority over, or which issue guidance in respect of, any aspect of the Services from time to time (including, without limitation, any operator of a public communications system);

    3.2. notify Upland immediately upon Customer's becoming aware of any complaint in relation to Customer's or its Users' use of all or part of the Application and provide such information and assistance as Upland and its licensors reasonably require in relation to the same; and

    3.3. ensure that, in relation to any email solution forming part of the Application, all return path emails (including bounce-back emails) pass through the relevant part of the Application for processing. Further, Customer shall not and shall ensure that none of its Users shall not do or permit anything to be done which causes such return path emails to be routed other than through the relevant part of the Application.

UPLAND CLICKABILITY APPLICATION:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's Clickability Application, the following additional terms and conditions shall govern such use:

1. **Tracking; Cookies**.

    1.1. Customer acknowledges that, while the Services do not utilize cookies to track visitors, the Services do track the IP address and associated usage date (pages visited, time on site, etc.) of visitors to Customer's site(s) supported by the Services.

    1.2. Customer may place its own or third-party cookies on the site, which may transmit data back to the Services.

2. **Privacy Policy.**

    2.1. Customer represents, warrants and covenants that it has and will continue to have a privacy policy on the supported site(s) which accurately reflects the data usage, processing and storage practices on the site, including those performed by Supplier in accordance with provision of the Services.

    2.2. Customer will indemnify, defend and hold harmless Supplier in accordance with Customer's breach of Section 2.1, immediately above.

UPLAND CXM APPLICATIONS:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's Adestra, Hipcricket, Mobile Commons, PostUp, Rant & Rave, Upland Mobile Messaging or Waterfall Applications (each, a "**CXM Application**") the following additional terms and conditions shall govern Customer's use:

1. **ACCEPTABLE USE POLICY**.

    1.1. <u>Customer Responsibilities</u>. Customer shall comply with all statutory and regulatory obligations and relevant codes of practice relating to the use of any CXM Application, including but not limited to the following:

        1.1.1. all communications sent by the Customer through any CXM Application (each, a "**Message**") shall be sent only to recipients (each, a "**Message Recipient**") who have given the Customer their consent to receive such Messages or where the Customer has another valid legal basis under applicable law to send the Message;

        1.1.2. the Customer shall use an unsubscribe and/or suppression system to comply with an opt-out request from Message Recipients who do not wish to receive Messages from or on behalf of the Customer.

    The Customer is entitled to use either its own or Upland's unsubscribe and/or suppression system(s) for the purposes of complying with this Section 1.1, and the system that Customer wishes to use shall be expressly agreed by the Parties from time to time in writing, provided that nothing in this Section 1.1 shall (in the absence of any obligation imposed on the Customer by law) require compliance by the Customer in respect of communications with its own employees.

    1.2. <u>Use Restrictions</u>. Customer shall not use or cause or allow to be used any CXM Application:

        1.2.1. for the transmission of any material that might be deemed defamatory, libelous, pornographic, obscene or immoral;
        1.2.2. in violation of (i) applicable law, (ii) telecommunication carrier rules and regulations, or (iii) aggregator rules and regulations; or
        1.2.3. in a manner which, alone or in association or in conjunction with any other service (i) breaches any third-party rights (including, without limitation, Intellectual Property Rights, rights of privacy and rights in relation to Personal Data); or (ii) harms (or is reasonably likely to harm) the reputation and good standing of Upland.

    1.3. <u>Blacklists; Complaints</u>. In the event that any short code, long code, IP address, range of IP addresses or domain associated with a CXM Application, or the operation of such CXM Application, is blacklisted or a complaint is received by either Upland or Customer in respect of use of a CXM Application, the Customer shall provide Upland with all information it reasonably requires in respect of the collection of the Message Recipient's email address, telephone number and/or other data (including, for each Message Recipient concerned, the date and time and source of collection of the Message Recipient's email address and proof of what permissions were obtained from the Message Recipient as regards receipt of Messages from or on behalf of the Customer) within twenty-four (24) hours of notification of such blacklisting or complaint. For the protection of each party, Upland reserves the right to suspend access to the CXM Application until the Customer has provided such information.

    1.4. <u>Health Insurance Portability and Accountability Act & Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**")</u>. Customer is responsible for ensuring that all personal health information ("**PHI**") provided to Upland has been collected in accordance with HIPAA, and that sufficient notice and consent has occurred to allow Upland to perform its obligations under the Agreement.

    1.5. <u>Telephone Consumer Protection Act ("**TCPA**")</u>. Customer is responsible for ensuring that all phone numbers and other personal information provided to Upland has been collected in accordance with the TCPA, for ensuring that sufficient notice and consent has occurred to allow Upland to perform its obligations under the Agreement, and for the preparation and distribution of all messages, content, and other materials provided to be included in Messages delivered to the Message Recipients by and through any CXM Application.

    1.6. <u>Carriers & Aggregators</u>. Customer acknowledges that Upland's ability to perform its obligations under the Agreement are dependent on carriers and aggregators and that the Services may be interrupted in the event of an aggregator or carrier failure.

    1.7. <u>Payment Card Industry Data Security Standard ("**PCI DSS**")</u>. Customer acknowledges that the Messages are not secure methods by which to transmit information subject to PCI DSS. Accordingly, Customer represents and warrants that it will not provide any such information to Upland.

    1.8. <u>Programs</u>. Customer shall be responsible for ensuring that all programs (including contests, drawings, raffles, lotteries, etc.), including the administration thereof, comply with all applicable laws, rules and regulations ("**Programs**"). Customer shall be responsible for any and all liabilities resulting from such Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with any breach of this Acceptable Use Policy by the Customer or by any third party acting on behalf of or under the authority of the Customer.

UPLAND INGENIUS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's InGenius Application, as delivered on a SaaS basis, the following additional terms and conditions shall govern such use:

1. **SalesForce OrgID**. Customer acknowledges and agrees that where the InGenius Application is configured to enable Customer's Users to interact with Customer's instance of Salesforce.com, then Customer shall promptly provide its Salesforce OrgID (the "OrgID") to Upland, together with any other related information reasonably requested by Upland in connection with such configuration. For the avoidance of doubt, Upland shall use such information for the sole purpose of disclosing Customer's OrgID to Salesforce.com, as required for Upland's performance of its contractual obligations owed to Salesforce.com. Customer agrees that such disclosure in accordance with this Section 1 shall not be considered a breach of Upland's confidentiality or security obligations arising elsewhere in the Agreement, or otherwise in connection with the Agreement.

UPLAND LOCALYTICS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's Localytics Application, the following additional terms and conditions shall govern such use:

1. **Definitions**. The following terms, when used in this Exhibit B, shall have the following meanings:

    1.1. "App" means Customer's proprietary software within which the Client Libraries are installed (e.g., Customer's mobile, web-based, or desktop applications).

    1.2. "App User Data" means all data and information transmitted to the Localytics Application from Customer's App(s) via the Client Libraries. For the avoidance of doubt, the term "Customer Data", as used in the Agreement and herein, includes App User Data.

    1.3. "Client Libraries" means the Localytics Application-specific client libraries provided by Upland and installed within Customer's App(s) for the purpose of collecting App User Data and sending such App User Data to Customer's Instance.

    1.4. "Data Point" means a session start, session stop or individual recording of a single event occurring within an App using the Client Libraries.

    1.5. "Device and IP Information" means any information used to identify a mobile device (such as GAID, IDFA, etc.) or the internet protocol address assigned to a mobile device.

    1.6. "Monthly Active User" means each individual installation of Customer's App that transmits App User Data during the applicable billing period.

    1.7. "Results" means the work product resulting from Customer's use of the Localytics Application, to the extent based on the Customer Data.

2. **License Rights in the Client Libraries**. In addition to the rights granted to Customer under Section 1 of the Software-As-A-Service Schedule to which this Exhibit B is attached, 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 rights to download, install and use the Client Libraries in connection with Customer's use of the Localytics Application.

3. **Customer Representations; Localytics Application Use Restrictions.**

    3.1. Customer represents and warrants that it owns all right, title and interest, or possesses sufficient license rights, in and to the App User Data provided to Localytics as may be necessary to permit the use of the App User Data as contemplated under the Agreement and within applicable Documentation.

    3.2. Customer agrees to the following restrictions regarding its use of the Localytics Application and related Services:

        3.2.1. If Customer's usage exceeds an average of 150 Data Points per Monthly Active User in a month, a fee of $100 per one million additional Data Points shall be applied (it being agreed that in the event a different Data Point limit and/or fee for exceeding such limit is set forth in a Sales Order, the limit/fee set forth on the Sales Order shall apply);

        3.2.2. Customer shall not, in configuring the Client Libraries to track Data Points for transmission to the Localytics Application, use unique values or a continuous set of values as inputs to event attributes.

4. **Privacy and Data Protection**. With the limited exception of Device and IP Information (to the extent any of the same qualifies as Personal Data), Customer and its Users shall not transmit to the Localytics Application any Personal Data, unless Upland expressly agrees to receive such information in a signed writing, and then solely as necessary in connection with Customer's use of the Localytics Application. Customer is responsible for any Personal Data that Customer does provide to Upland. Customer shall have in place a privacy policy regarding its use of Personal Data and shall comply with all applicable laws relating to the collection and use of Personal Data and other App User Data.

5. **Customer Indemnity**. Customer shall: (i) defend, save and hold harmless Upland against any claim made or brought against Upland that results from or arises out of (a) any breach by Customer of any of its representations, warranties and obligations in Section 2.3.1 or Section 2.4 of this Exhibit B, or (b) any violation of any third party's (including any App end user's) privacy rights arising out of Customer's use of the Localytics Application; and (ii) indemnify Localytics for any damages finally awarded against, and for reasonable attorneys' fees incurred by, Upland in connection with any such claim. Customer's obligations arising under this Section 2.5 are expressly conditioned upon Upland: (a) promptly providing Customer with written notice of the claim; (b) providing Customer sole control of the defense and settlement of such claim (provided Customer may not settle any claim unless the settlement unconditionally releases Upland of all liability); and (c) provides to Customer all reasonable assistance, at indemnifying party's expense. Further, Customer shall be relieved of its responsibilities under this Section 2.5 for any claim arising solely from the actions or omissions of Upland, its officers, employees or agents.

6. **Customer Data and App User Data**. Customer shall own all right, title and interest (including all intellectual property and other proprietary rights) in and to the Results, App User Data and Customer Data. Customer shall be solely responsible for all App User Data collected from any end users of Customer's App(s) as a result of Customer's use of the Localytics Application, including the accuracy and completeness of such information. Customer hereby grants Upland a nonexclusive, royalty-free right and license to access, use, copy, process and store the App User Data solely for the purpose of providing the Localytics Application. Customer agrees that the Localytics offering depends on the availability of the App User Data. Except for the limited rights and licenses expressly granted in the Agreement, no other license is granted, no other use is permitted, and Customer shall retain all right, title and interest (including all intellectual property and proprietary rights embodied therein) in and to the Results, and App User Data.

7. **General Learning; Aggregate Data**. Customer agrees that Upland is free to: (i) collect, use and create derivative works of data regarding usage and performance of Customer's applications derived from the Results; (ii) aggregate such data with other data to create compilations and analysis of such data (the "Localytics Aggregated Data"); and (iii) use, copy, modify, create derivative works of, publish and disclose such Localytics Aggregated Data in a manner that does not directly or indirectly identify Customer or any individual person. Localytics shall own all right, title and interest to the Localytics Aggregated Data and any derivative works thereof.

UPLAND RIGHTANSWERS APPLICATION:

Where Customer enters into a Sales Order for the purchase of rights to access and use Upland's RightAnswers Application, as delivered on a SaaS basis, the following additional terms and conditions shall govern such use:

1. **Third Party Licenses**. The Application includes certain third party and other code, including, but not limited to, free and open source software (collectively, "Other Code") covered by other licenses ("Third Party Licenses"), as identified in the Third Party and Open Source Code License Terms available at https://uplandsoftware.com/rightanswers/rightanswers-license-agreements/, all as may be revised by Upland from time to time. Customer's license to the Other Code is subject to the terms of this MSA. Upland agrees to update the list of Other Code on the Website as required from time to time.

2. **Authorization.** Upland may, in its sole discretion, provide links in the Application to other sites on the Internet for the convenience of its users. These sites have not been reviewed by Upland and are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such site and for Customer's usage of such content. Upland is not responsible for the availability of such sites and does not endorse such sites.

UPLAND PANVIVA APPLICATION:

Where Customer enters into a Sales Order for the purchase of Upland's Panviva Application, the following additional terms and conditions shall govern such use:

1. **Third Party Content**. The Customer acknowledges that as part of providing the Application, Panviva utilizes enabling technology, and in some instances, those license arrangements require Panviva to include certain additional terms and conditions on the end user. Where applicable these additional terms are set out at www.panviva.com/terms-of-use/tps, or such other URL as may be provided by Upland to Customer from time to time, and are hereby incorporated into the Agreement. Further, the Application includes open source software programs that are made available by Panviva and other third parties under their respective open source licenses ("Open Source Licenses"). Certain Open Source Licenses and/or certain relevant provisions of such Open Source Licenses are set out at www.panviva.com/terms-of-use/oss, or such other URL as may be provided by Upland to Customer from time to time. Customer is obligated to comply with the applicable Open Source Licenses related to such open source software programs. Open source software programs are governed solely by such Open Source Licenses, including without limitation warranty and indemnification, which will prevail over these Terms.

2. **Panviva API Supplementary Agreement**. Upland's Panviva application programming interface(s) (the "Panviva APIs") may be used for a broad range of purposes, including facilitating real-time interaction between information residing in the Panviva Application and other applications or systems to be used by the Customer. Where Customer wishes to procure rights and licenses for use of the Panviva APIs, the parties acknowledge that the terms and conditions applicable to such purchase shall be set forth in a supplement to the Agreement, the terms of which shall be agreed prior to Upland's provision of any such rights and licenses.

3. **Regulated Data**. Customer acknowledges and agrees that the Application and Services are not designed for use with data that may be classified as highly sensitive, personal and/or otherwise subject to information privacy regulations, including without limitation any data subject to laws governing the storage and transmission of personally identifiable information, protected health information or information subject to the Payment Card Industry Data Security Standard (collectively, "Regulated Data"). Customer agrees that it shall

not provide Regulated Data to Upland as Customer Data. Customer agrees to indemnify, defend and hold harmless Upland and its shareholders, directors, officers, employees, suppliers and licensors (each, a "Upland Indemnified Party") from all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, brought against any Upland Indemnified Party arising out of or relating to Customer's failure to comply with this Section 3.

UPLAND SECOND STREET APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's Second Street Application(s) and related services, the following additional terms and conditions shall govern such use:

1. **Additional Terms of Use**. Customer's Users' (and, as applicable, any third party's) access to the Application(s) to or through the Second Street Application website ("Site") will be subject to such additional guidelines, restrictions, or rules applicable to such Site, including, without limitation, any technical specifications that Upland may provide from time to time. Customer shall post links to its privacy policy (the "Customer Privacy Policy"), and Customer's terms of use (the "Customer Terms of Use") as part of its Customer Data, and where applicable, a link to either (i) Upland Second Street's official rules for contests, sweepstakes and promotions conducted and administered by Upland (the "Official Rules"); or (ii) if not an Upland Second Street administered promotion, promotion terms and conditions or official rules provided by Customer (collectively, the "Links"). Customer is responsible for maintaining a Customer Privacy Policy that accurately describes its data collection, use, sharing and retention practices and otherwise complies with all applicable federal, state and local laws, rules and regulations. When in Customer's control, the Links shall be placed in conspicuous locations. In addition, Customer agrees to act diligently, as reasonably necessary, to obtain or maintain any protection afforded under the Digital Millennium Copyright Act, as amended.

2. **Customer Additional Warranties**. Customer represents and warrants to Upland that: (i) Customer Data and Customer's use of any Application or Service will not violate the rights of any third party. With respect to Customer Data, without limiting any rights or remedies available to Upland, Upland reserves the right to remove from the Application or Service infringing Customer Data or Customer Data that otherwise violates the terms of this Agreement; and (ii) Customer use of the Services shall comply with all applicable laws, rules and regulations.

3. **Links**. Upland and Customer each hereby acknowledge and agree that although the Application(s) and other transactions contemplated by the Agreement may provide for third party resources and third-party links on the websites of both parties, any such website links that may be provided are done so solely as a convenience and do not represent an endorsement by either party of the content, advertising or business practices (including the terms of use or privacy policies) of the third party. Each party also acknowledges and agrees that the other party will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on the content, advertising or business practices of such third-party or other linked third-party sites.

4. **Survival**. Customer agrees that its obligation to complete and fulfill any contest, sweepstakes or other promotion in accordance with the terms or official rules of the contest, sweepstakes or other promotion will survive any termination or expiration of this Agreement or a Sales Order.

5. **E-Commerce Application Use; Restrictions**.

   a. E-Commerce Applications. Where Customer enters into a Sales Order for the purchase of any Upland Second Street "E-Commerce Application" the terms and conditions set forth in this Section 5 shall apply.

   b. Customer Responsibilities. Without limiting the generality of any other provision in the Agreement or the applicable Sales Order, Customer's use of the E-Commerce Application(s) is limited to the purpose of transacting an online fundraising event or fundraiser ("Fundraiser"), for the purpose of offering local services, shopping, travel, gift card, ticketed events and other deals and offerings to consumers, with the use of Payment Processors (defined below), may accept monetary payment, including but not limited to monetary contributions ("Donation(s)" and collectively "Payment(s)") from individuals or entities ("Payees") and for the purpose of managing consumer data collected in the above processes. With respect to the E-Commerce Applications, Customer represents, warrants and covenants that (i) any activities with respect to such Application ("Marketplace Activities") will comply with all applicable federal, state, and local laws, including any dealing with gift cards and gift certificates, tickets sales, raising funds for a charitable purpose, co-marketing a Fundraiser, and any financial reporting obligations as defined by applicable law, including but not limited to laws and regulations relating to registration, political contributions, tax reporting and asset disclosure for a Fundraiser and organization, if applicable, (ii) any Marketplace Activities do not and will not violate any third party rights including, without limitation, intellectual property rights, (iii) any Marketplace Activities do not and will not violate any laws regarding false advertising and laws regarding gift cards, ticket sales, co-marketing and fundraising activities, as applicable, (iv) all Payments, including Donations contributed to any Fundraiser, will be used as described in the content Customer posts and as Customer describes the Fundraiser and will not be used for any other purpose, (v) if Donations are to be matched, Customer will be responsible for providing such matching funds or ensuring that the matching funds are otherwise obtained and related obligations met. With respect to any goods sold, gift cards sold, tickets sold or Fundraisers conducted, Customer shall undertake responsibility with respect to such Marketplace Activities, to include but not be limited to (u) creating and reviewing the requirements regarding Payees conduct, including with respect to any recurring payments, and posting of the same to ensure compliance with all applicable laws and the filing of any and all documents required under applicable laws; (v) having appropriate bonds secured, with the assistance of any co-marketer to fulfill state requirements if any, (w) supervising the selection of beneficiaries of any Fundraiser and distribution of Donations, (x) sending applicable tax notification (as applicable), (y) taking appropriate action with respect to unclaimed property laws and gift cards or gift certificates and (z) take all appropriate action regarding setting ticket prices, rescheduling events, refunding Payments or issuing credits regarding ticketed events. Customer

shall be responsible for any written disclosures required by any federal, state or local agencies, including any tax authorities. Furthermore, Customer acknowledges and agrees that Upland is not a payment processor and will not be holding any funds or issuing any tickets, gift cards or gift certificates. Customer acknowledges that any Payments and the Fees under the applicable Sales Order to be paid by/to Second Street will be subject to the Payment Processor's terms and procedures, including those for chargebacks and account holds. Customer shall be responsible for making any decisions regarding the elements of any Fundraisers and beneficiaries of such Fundraisers. Customer should consult with its own financial, tax, legal or other professional advisers, as appropriate. Customer shall be responsible for the use of any Donations or other disposition of Donations. Upland shall have no obligations or liability with respect to any Payments received by Customer and no liability to any Users or third parties with respect to funds received by Customer or refunds due from Customer. Customer shall undertake responsibility for Marketplace Activities. Upland shall have no obligations or liability with respect to any Customer Marketplace Activities. Customer shall be responsible for any federal, state local or any other taxes based on Customer's income or gross receipts, if any. Customer agrees to determine what, if any, taxes apply to the Payments received through use of the E-Commerce Applications, including but not limited to Donations, and to assess, collect, report and remit the appropriate amount of tax, if any to the appropriate tax authority. Customer acknowledges and recognizes that Upland will make third party payment processing partners available to Customer to process and funds to be received and the decision to use such processing partners ("Payment Processor(s)") is in the sole discretion of Customer. Furthermore, Customer acknowledges and agrees that using Payment Processors is an integral component of the E-Commerce Application and that Upland shares and otherwise exchanges information submitted through the E-Commerce Applications with Payment Processors in order to fulfill its obligations to the Customer. Customer will be responsible for industry standard type fees that apply pursuant to the terms of the applicable Payment Processor and shall obtain such terms from such Payment Processor.

c. Upland Representations and Disclaimers. Upland provides no financial, tax, legal, or other professional advice in providing the E-Commerce Application. No content is intended to provided financial, tax, legal or other professional advice. By offering the E-Commerce Application, you acknowledge and agree that Upland is merely providing the platform and technology to allow Customer to reach and connect with potential Payees and potential Payments, including Donations. The existence of the E-Commerce Application is not a solicitation of Donations and/or Payees or advice or consultation regarding Donations and/or Payees. Upland shall not be responsible for the use of any Payments, including Donations, or any tax treatment regarding the same. Upland cannot and does not guarantee that any Fundraiser will obtain a certain amount of Donations or ticket sales for a ticketed event. Upland does not endorse any Fundraiser or cause or the accuracy of any information posted by a Customer or its Users. Upland is not a payment processor, broker, agent, ticket reseller, ticket agent, promoter, financial institution, 501(c)(3) or other nonprofit entity. Upland is not responsible for any required communications to Users or third parties, or for any failure to communicate to such Users or third parties.

d. Programs. Customer shall be responsible for ensuring that all programs administered through the E-Commerce Applications and related Services comply with all applicable laws, rules and regulations ("E-Commerce Programs"). Customer shall be responsible for any and all liabilities resulting from such E-Commerce Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with: (i) any breach or alleged breach of this Section 5(d) by the Customer or by any third party acting on behalf of or under the authority of the Customer; and (ii) any claim by any federal, state, local or other tax authority in connection with any Fundraiser, any Payments, including Donations, except with respect to Upland's treatment of any fees paid from the Payments.

6. **Contests & Interactive Content Application Use; Restrictions.**

a. Contests & Interactive Content Applications. Where Customer enters into a Sales Order for the purchase of any Upland Second Street Contests & Interactive Content ("C&IC") Application, the terms and conditions set forth in this Section 6 shall apply.

b. Upland Responsibilities; Nationally-Managed Promotions. If selected on the applicable Sales Order, Upland may provide a national grand prize for the nationwide Site visitor who is randomly selected through a drawing or who most correctly picks the winning games(s), score(s) or team(s) of a particular promotion using the Second Street "UPICKEM" Applications, as determined by Upland in its sole discretion and in accordance with the applicable promotion official rules. Upland represents, warrants and covenants that any contest, sweepstakes, or other promotion conducted by Upland in furtherance of a national grand prize provided by Upland pursuant to an applicable Sales Order hereof (collectively, "Second Street Promotion Activities") will be administered in accordance with all applicable federal and state laws, rules and regulations as the same are interpreted as of the start of the applicable contest, sweepstakes or other promotion. Upland's representation, warranty and covenant set forth in this Section 6(b) is void if Customer modifies, edits or revises the Second Street Contest Activities official rules or other materials generated for the Second Street Contest Activities. To the extent that Customer modifies, edits or revises the Second Street Promotion Activities official rules or other materials generated for the Second Street Contest Activities, such modification shall be deemed a Customer Promotion Activity pursuant to Section 6(c), below.

c. Customer Responsibilities. Customer shall undertake responsibility for all Customer Promotion Activities, to include (a) creating and reviewing the Customer Promotion Activities (defined below) official rules through counsel expert in the area to confirm compliance with all applicable federal, state, and local laws, rules and regulations and the filing of any and all documents, registrations, and reports required under applicable federal, state, and local laws, rules and regulations; (b) if applicable, creating, printing and local shipping of tear pad forms containing the promotion official rules to Upland, (c) having appropriate bonds secured to fulfill state requirements and insurance to cover prize fulfillment, (d) supervising the selection and verification of the winners, (e) supervising and ensuring the fulfillment and handling of all prize claims and consumer inquiries; (f) sending affidavits/releases, or causing affidavits/releases to be sent, and signed by prize winners, verifying eligibility and providing for the release of Customer and Upland from all liability in connection with the Customer Promotion Activities and prize redemption and use prior to the award of prizes; and (g) sending

applicable tax forms to winner and applicable tax authorities (as applicable). Customer represents, warrants and covenants that any contest, sweepstakes, or other promotion, other than any Second Street Promotion Activities (collectively, "Customer Promotion Activities"), and all related advertising and marketing of any Customer Promotion Activities or Customer-created advertising and marketing of Second Street Promotion Activities will comply with all applicable federal, state and local laws, rules and regulations and will not violate any third party rights including, without limitation, intellectual property rights and rights of publicity and privacy. Without limiting the generality of any other provision in the Agreement, Customer may not use the Second Street Application with respect to any illegal contest, promotion, gambling activity, or collection of consumer information. Upland shall have no obligations or liability with respect to any Customer Promotion Activities. Without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with a Customer Promotion Activity or any breach or alleged of this Section 6 by the Customer or by any third party acting on behalf of or under the authority of the Customer.

7. **Email Application Use; Restrictions**.

a. <u>Email Applications</u>. Where Customer enters into a Sales Order for the purchase of any Upland Second Street Email Application the terms and conditions set forth in this Section 7 shall apply.

b. <u>Restrictions</u>. Without limiting the generality of any other provision in the Master Agreement, Customer: (i) shall not use the eBlast Applications in violation of applicable federal, state, or local law, rule or regulation or to otherwise distribute illegal promotions, pyramid schemes, nudity, obscene content, gambling related content, pharmaceutical related content, illegal software, viruses, chain letters or multi-level marketing campaigns; and (ii) shall only import, access or otherwise use lists for which all listed parties have consented to receive commercial emails from Customer or has another valid legal basis under applicable law to send commercial emails. Customer acknowledges that a listed party's agreement to participate in a survey is not consent to receive correspondence from Customer. Customer shall not utilize the eBlast Applications to send any commercial electronic mail message (as that term is defined in the CAN-SPAM Act of 2003, as amended from time to time and any successor law (the "CAN-SPAM Act")) to any person who has opted out or otherwise objected to receiving such messages from you or another sender on whose behalf you may be acting. Customer shall not mail to distribution lists, newsgroups, or spam or unsolicited email addresses. Customer shall follow the rules of all applicable laws, rules and regulations, including, without limitation, the CAN-SPAM Act. At a minimum, all e-mails sent by Customer using eBlast shall: (iii) contain a one-click unsubscribe link; (iv) contain non-Internet contact information of the sender (such as Customer's address and phone number); (v) state the reason the recipient is receiving the message, (vi) accurately and in a non-deceptive manner identify your organization, your Application or your service in the "from" line; (vii) not contain any deceptive, misleading or illegal content in the "subject" line regarding the overall subject matter of the email message; and (viii) not include any incentives (e.g., coupons, discounts, awards) that encourage a recipient to forward the email message to another recipient.

c. <u>Disclaimers</u>. It is understood that Upland makes no guarantee that HTML messages will be rendered properly on all recipients' e-mail programs due to the wide variety of HTML generation tools available. Although Upland will use commercially reasonable efforts so that e-mail messages sent through Upland's Second Street Application servers follow e-mail standards, Upland cannot guarantee and is not responsible for ensuring that messages will look consistent across all e-mail platforms due to the number of different HTML composition tools available. Customer further acknowledges and agrees that not all email messages sent through use of the eBlast Applications will be received by their intended recipients, and email messages that are sent through using the eBlast Applications may generate abuse complaints from recipients. Customer is responsible for ensuring that email campaigns do not generate a number of abuse complaints in excess of industry norms. Upland, in its sole discretion, shall determine whether the level of abuse complaints is within industry norms, and its determination shall be final, binding and conclusive for all purposes under this Agreement. Upland reserves the right to terminate the applicable Sales Order upon written notice to Customer, without penalty, if Upland determines the level of complaints exceeds industry norms.

d. <u>Customer Acknowledgments and Covenants</u>. Customer acknowledges and agrees that, as between Upland and Customer, Customer is the sole or designated "sender" (as such term is defined in the CAN-SPAM Act) of any email message sent using the eBlast Applications. Customer further acknowledges and agrees that Customer is responsible for maintaining and timely honoring any unsubscribe requests during the Subscription Term or following termination of the applicable Sales Order or the Agreement.

e. <u>Programs</u>. Customer shall be responsible for ensuring that all programs administered, or products or services advertised through the Email Applications and related Services comply with all applicable federal, state and local laws, rules and regulations ("**Email Programs**"). Customer shall be responsible for any and all liabilities resulting from such Email Programs, and, without prejudice to all other remedies of Upland, the Customer shall defend, indemnify and hold harmless Upland, its officers, directors and employees against all claims, actions and proceedings, losses, damages, fines, charges and penalties (financial or otherwise), expenses and costs directly or indirectly arising out of or in connection with any breach or alleged of this Section 7 by the Customer or by any third party acting on behalf of or under the authority of the Customer.

8. **Reimbursements for Returns/Refunds**. To the extent that any payments are received by Upland as part of Upland's obligations under any Agreement, if any, Customer shall reimburse Upland in full for any and all returns or refunds of any kind processed by Upland for the benefit of any User or third party.

This On-Premise Term License Schedule, together with its exhibits reference herein, supplements the Master Services Agreement 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 MSA expressly indicates that Customer has purchased a term license to install and use an Application (*e.g.*, an on-premise deployment of Upland's InGenius 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, license to install and use licensed copies of the Application solely in connection with Customer's internal business operations in ordinary course of Customer's 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

1.4.   Usage Audit. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Application. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five business days of any written request, so long as no more than two requests are made each year. Customer shall permit Upland to audit Customer's use of the Application. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Application, Customer shall pay to Upland an amount equal to such underpayment within 10 business days of the date of the relevant audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5.   Delivery. An Application will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the applicable Application or has otherwise delivered the applicable Application to Customer. In the event the Application requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses it has purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

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, if any, 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

3.2.2. attempt to reverse compile, disassemble, reverse engineer, or attempt to discern the source code or otherwise reduce to human-perceivable form all or any part of the Application;

3.2.3. 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;

3.2.4. 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;

3.2.5. 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;

3.2.6. 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;

3.2.7. use the Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or store or transmit material in violation of third-party privacy rights;

3.2.8. knowingly use the Application to store or transmit Viruses or other malicious code;

3.2.9. knowingly interfere with or disrupt the integrity or performance of the Application; or

3.2.10. alter or remove any copyright notice or other proprietary rights notices that may appear on the Application or Documentation.

3.3.   Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions, if any, shall be set forth as **Exhibit B**, attached hereto and incorporated herein by reference, and the parties shall comply with such additional terms and conditions. For the avoidance of doubt, where Exhibit B is not attached to this Schedule, no such additional terms and conditions shall apply.

3.4.   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 (the "**Standard Support Terms**"), are made a part of and incorporated into the terms of the On-Premise Term License 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
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 by the parties in a signed writing Support Services shall be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**").

3. **Upland Support Limitations**:

   i.   **Support Limitations**. Support Services do not include:
   - g.   Application training, design or configuration assistance;
   - h.   Support for applications, hardware and dependent technology not supplied by Upland;
   - i.   Support for issues resulting from Customer's negligence or failure to use the Application per Upland's instructions or recommendations;
   - j.   Development support for API/SDK usage;
   - k.   Support of custom development not supplied by Upland; or
   - l.   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 MSA (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 MSA or inconsistent with the Documentation.

v. **Data**. If Customer has a license to use and host an on-premise Application, Customer is encouraged to backup data often and to always do so prior to accessing any Update. Upland shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

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 MSA.

5. **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 MSA 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.

EXHIBIT B
PRODUCT-SPECIFIC TERMS FOR UPLAND INGENIUS

These Product-Specific Terms for Upland's "InGenius" Application are made a part of and incorporated into the terms of the On-Premise Term License Schedule to which this Exhibit B attached. All capitalized terms not defined herein shall have the meanings ascribed to them elsewhere in the Agreement.

UPLAND INGENIUS APPLICATION:

Where Customer enters into a Sales Order for the purchase Upland's InGenius Application, the following additional terms and conditions shall govern such use:

1. **SalesForce OrgID**. Customer acknowledges and agrees that where the InGenius Application is configured to enable Customer's Users to interact with Customer's instance of Salesforce.com, then Customer shall promptly provide its Salesforce OrgID (the "**OrgID**") to Upland, together with any other related information reasonably requested by Upland in connection with such configuration. For the avoidance of doubt, Upland shall use such information for the sole purpose of disclosing Customer's OrgID to Salesforce.com, as required for Upland's performance of its contractual obligations owed to Salesforce.com. Customer agrees that such disclosure in accordance with this Section 1 shall not be considered a breach of Upland's confidentiality or security obligations arising elsewhere in the Agreement, or otherwise in connection with the Agreement.

2. **License Keys**. A temporary license key shall be issued upon receipt of approval of Customer's Sales Order, and the expiration date of such license key shall be extended through the remainder of the applicable Subscription Term upon Upland's receipt of payment in full for such InGenius Application license keys.

3. **Third-Party Software**. As used herein, "**Third-Party Software**" means any software components or other material that is provided or downloaded with the InGenius Application (including any modification, translation or adaptation or any other improvement or development of the foregoing) as identified in the installed Application directory, through a URL link, Documentation and/or web site and which are distributed as "free software", "open source software" or under a similar licensing or distribution model (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License). Third-Party Software is subject to the applicable Third-Party Software licenses, and Customer acknowledges and agrees that it may be bound by such licenses.

This On-Premise Content License Schedule, together with its exhibits, if any, referenced herein, supplements the Master Services Agreement to which this Schedule is attached and sets forth additional terms and conditions subject to which Upland will make available certain Services and Upland Content (defined below) to Customer on a subscription basis and Customer will be permitted to use such Services and Upland Content. This Schedule shall apply only where a Sales Order made subject to this MSA expressly indicates that Customer has purchased a term license to Upland Content (*e.g.,* Upland's "RightAnswers Knowledge-Paks", or "**KPAKS**" content) which is made available by Upland on a subscription basis.

SUPPLEMENTAL TERMS AND CONDITIONS

1.   PROVISION OF THE SERVICES

1.1.   Upland Content; General. As used in this Schedule, "**Upland Content**" means Upland's RightAnswers searchable knowledge base of information, which is segmented into collections relating to a particular product (or group of products) and such other information, technology, methods, processes, specifications, solutions, utilities, graphics and data made available by Upland to Customer in connection with such knowledge base. For the avoidance of doubt, Upland Content is deemed to be an "Application", as such term is used elsewhere in this Agreement. Upland shall make the Upland Content available and provide Support Services to Customer and its Users as detailed herein.

1.2.   Use of the Upland Content 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, license to download, reproduce and use licensed copies of the Upland Content solely in connection with Customer's internal business operations in ordinary course of Customer's 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 the Upland Content is provided on a per-User basis, Customer agrees that: (i) the maximum number of Users authorized to access and use the Upland Content 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.

1.4.   Usage Audit. Upon reasonable notice to Customer, during the term of this Agreement and for three years thereafter, Customer will keep current, complete, and accurate records regarding the reproduction, distribution, and use of the Upland Content. Customer will provide such information to Upland and certify that it has paid all fees required under this Agreement within five (5) business days of any written request, so long as no more than two (2) requests are made each year. Customer shall permit Upland to audit Customer's use of the Upland Content. Such audit may be conducted no more than once per quarter, at Upland's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to interfere with Customer's normal conduct of business. If any of the audits referred to herein reveal that Customer has underpaid any fees to Upland in connection with the Upland Content, Customer shall pay to Upland an amount equal to such underpayment within ten (10) business days of the date of such audit. This Section 1.4 shall survive the termination or expiration of the Agreement for a period of one (1) year.

1.5.   Delivery. The Upland Content will be presumed delivered once Upland has provided Customer with instructions permitting Customer to proceed with downloading the Upland Content or has otherwise delivered the Upland Content to Customer. In the event the Upland Content requires a license activation key, Customer is obligated to request a license activation key corresponding to the quantity of licenses purchased. Any delay in the request process due to Customer shall not affect determination of delivery.

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.

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, if any, 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 the Upland Content, 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 the Upland Content only in accordance with the Documentation;

3.1.6.   cooperate and assist Upland as reasonably necessary to prevent or terminate unauthorized use of the Upland Content 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

Upland Content or Documentation in any form or media or by any means; or

3.2.2. access all or any part of the Upland Content or Documentation in order to build a product or service that competes with the Upland Content or the Documentation;

3.2.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Upland Content or Documentation (*e.g.*, as a service bureau), or otherwise knowingly make the Upland Content or Documentation available to anyone other than the Users;

3.2.4. modify or use the Upland Content as to contain infringing, libelous, or otherwise unlawful or tortious material, or to contain material in violation of third-party privacy rights; or

3.2.5. alter or remove any copyright notice or other proprietary rights notices that may appear on the Upland Content or Documentation.

3.3.   Third-Party Sites. For the convenience of its Users, the Upland Content may contain links to third-party websites or other third-party materials made available on the internet. These sites are maintained by third parties over whom Upland exercises no control and, accordingly, Upland expressly disclaims any responsibility for the content, the accuracy of the information, and/or quality of products or services provided or advertised on such sites and for Customer's use, if any, of such third-party sites or any content appearing therein.   Further, Upland is not responsible for the availability of such third-party sites and does not endorse such sites.

3.4.   Return or Destruction; Survival. Following any termination or expiration of the Agreement, Customer shall: (i) immediately cease all use of the Upland Content, and (ii) within five (5) days of such termination or expiration, return or destroy (and, upon request, certify destruction of) any and all copies of Upland Content provided under the Agreement. 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 Upland Content (*e.g.*, as may be reasonably required in connection with either party's performance of its post-termination or transition assistance obligations).

These Standard Maintenance and Support Terms and Conditions are made a part of and incorporated into the terms of the On-Premise Content License 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
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**:

    iii.   **Support Services Defined**. Support Services shall consist of assistance to Customer with respect to:

    - a.   Guidance regarding proper use of the Upland Content; and
    - b.   Defect verification, reporting, tracking and resolution; and
    - c.   Upland Content licensing assistance.

    iv.   **Support Services Availability**. Unless otherwise agreed by the parties in a signed writing Support Services shall be available from 9:00 am to 6:00 pm, U.S. Eastern Time, Monday through Friday, excluding holidays (the "**Business Hours**").

3. **Upland Support Limitations**:

    vi.   **Support Limitations**. Support Services do not include:

    - m.   Training, design or configuration assistance;
    - n.   Support for applications, hardware and dependent technology not supplied by Upland;
    - o.   Support for issues resulting from Customer's negligence or failure to use the Upland Content per Upland's instructions or recommendations;
    - p.   Development support for API/SDK usage;
    - q.   Support of custom development not supplied by Upland; or
    - r.   Product installation and upgrade assistance.

    vii.   **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 Upland Content or failure to comply with the Standard Support Terms or the Agreement (as opposed to a Defect in the Upland Content), 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.

    viii.   **Third Party Products**. Support Services do not cover the operation or use of third-party hardware or software or the Upland Content modified by any party other than Upland or used in any manner in violation of the Agreement or inconsistent with the Documentation.

ix.   **Data**. Customer is encouraged to backup data often and to always do so prior to accessing any Update. Upland shall have no responsibility for loss of or damage to Customer's data, regardless of the cause of any such loss or damage.

4. **Customer Obligations**:

vi.   **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.

vii.   **Pre-Call Procedures.** Prior to requesting Support Services from Upland, Customer shall comply with all published operating and troubleshooting procedures for the Upland Content. 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 Upland Content;
   b.   **Support Representative**. The Customer contact has the technical knowledge regarding the Upland Content 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 Upland Content.

viii.   **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.

ix.   **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.

x.   **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 Upland Content; (b) uses the Upland Content with any hardware or software not supplied or supported by Upland; (c) uses the Upland Content at any unauthorized location, if any; (d) fails to access an Update to the Upland Content if such Update would have resolved the Defect; or (e) otherwise uses the Upland Content in a manner not in accordance with the Documentation, these Standard Support Terms or the Agreement.

5. **Definitions**:

v.   "**Defect**" means a failure of the Upland Content to substantially conform to the functional specifications set forth in the Documentation.

vi.   "**Updates**" means a subsequent release of the Upland Content 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 Upland Content (*e.g.*, 2.5 to 3.0) or any other products that Upland, in its sole discretion, licenses separately for an additional fee.

vii.   "**Workaround**" means a modification or "patch" for a particular version of the Upland Content, which may be of a temporary or interim nature, to help cure or avoid a Defect.

viii.   "**Service Level**" means the certain level of Support Services (Standard, Gold or Platinum) that has been selected by the Customer on the Sales Order.

JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO ACCESS IMAGING SOLUTIONS, LLC AGREEMENT
(AIS)

The Johnson County Commissioners Court Finds, and the Parties Agree, as Follows:

1.1

This **Addendum** is part of an Agreement between **JOHNSON COUNTY, TEXAS**, a political subdivision of the State of Texas, (hereinafter referred to as "**COUNTY**" or "**JOHNSON COUNTY**" and **ACCESS IMAGING SOLUTIONS, LLC. ACCESS IMAGING SOLUTIONS, LLC.** may be referred to herein as "**AIS**" or "**COMPANY**".

1.2

JOHNSON COUNTY and AIS as applicable, may be collectively identified as the "**Parties**" or each individually a "**Party**". **This Addendum is part of the Agreement with AIS and is intended to modify (as set forth in this Addendum) all documents, including the Quotes and Master Services Agreement put forth by AIS. This Addendum modifies (as set forth in this Addendum)** any other document proffered to **COUNTY by AIS** or their agents and other documents defining the Agreement between **JOHNSON COUNTY, TEXAS and AIS,** including the Upland Software, Inc. Master Services Agreement.

1.3

NOT APPLICBLE (Co-op Reference)

1.4

This Addendum, combined with the terms of the attached Proposal from AIS, upon execution by both parties, constitutes a contractual Agreement between **JOHNSON COUNTY, TEXAS and AIS.**

2.1

This Agreement will be governed by and construed according to the laws of the <u>State of Texas</u>. Venue for any action or claim arising out of the Agreement must be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas.

2.2

Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.3

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.4

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. JOHNSON COUNTY will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, JOHNSON COUNTY **CANNOT enter into an agreement whereby JOHNSON COUNTY agrees to indemnify or hold harmless any other party**; therefore, all references of any kind to JOHNSON COUNTY indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:
> **... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...**

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that COUNTY is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that COUNTY'S general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that COUNTY does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that COUNTY will not agree to waive any rights and remedies available to COUNTY under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that COUNTY will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that COUNTY will provide statutory workers compensation for its employees; however, COUNTY does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

   a.   the date the governmental entity receives the goods under the contract;
   b.   the date the performance of the service under the contract is completed; or
   c.   the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

5.2

Texas Local Government Code Section 113.064. Approval of Claims by County Auditor, provides:

> **"(a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor...."**

Texas law requires that all disbursements of County funds be approved by the County Auditor and the Commissioners Court prior to such disbursement. JOHNSON COUNTY can and will make due disbursements following the approval of the disbursement by Commissioners Court (following the COUNTY'S receipt and review of a proper invoice through the proper COUNTY department responsible for the purchase of the goods or services). JOHNSON COUNTY cannot and does not authorize any entity to directly access County funds. AIS understands that the JOHNSON COUNTY Commissioners Court normally meets on the second and fourth Monday of each month

or the day following such Monday if the Monday is a County holiday. AIS further understands that invoices must be received by the COUNTY **not less than fourteen (14) days prior** to the Commissioners Court meeting in order for a payment to be reviewed by the necessary departments and offices and placed on the "bill run" for the Commissioners Court.

5.3

JOHNSON COUNTY does not authorize AIS or any entity to initiate debit entries to JOHNSON COUNTY'S account at any financial institution. Any provision in any document authorizing an entity to access COUNTY funds or financial accounts electronically or otherwise and to make withdrawals or transfers of such funds is hereby deleted and is of no effect and the Agreement shall be deemed modified to comport with payment procedure prescribed by Texas law for Texas counties.

6.1

No officer, member, or employee of COUNTY, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project or purchase is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project or purchase shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.,* as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that JOHNSON COUNTY, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information COUNTY reasonably believes that **AIS** might lawfully seek to claim as confidential, then COUNTY will forward the request to **AIS.** It shall be the obligation of **AIS** to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with **AIS** in making such submission to the Texas Attorney General's Office. **AIS acknowledges and understands that <u>contracts</u>, <u>agreements</u>, <u>payment</u> and <u>revenue</u> of a political subdivision of the State of Texas are public information and are <u>not confidential</u>.**

6.3

Services and products provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from

forced sales and liens may not attach thereto.

6.5

It is understood and agreed that JOHNSON COUNTY will not be subject to arbitration; therefore, any paragraph or provision requiring arbitration, is hereby deleted.

6.6

JOHNSON COUNTY shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

AIS certifies that pursuant to Section 231.006 of the Texas Family Code (regarding unpaid child support) that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. **AIS** hereby certifies that it is not ineligible to receive State or Federal funds due to child support arrearages

7.2

AIS verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. **AIS** verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.3

AIS verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the contract against a firearm entity or firearm trade association.

7.4

AIS verifies that it complies with Texas Government Code Chapter 2274 and further verifies that it:

    (1) does not boycott energy companies; and

    (2) will not boycott energy companies during the term of the contract.

    In this provision:

    (1) "Boycott energy company" has the meaning assigned by Section 809.001.

    (2) "Company" has the meaning assigned by Section 809.001, except that the

term does not include a sole proprietorship.

(3) "Governmental entity" has the meaning assigned by Section 2251.001.

7.5
At any time following the expiration of 365 DAYS from the execution of the contract, COUNTY may terminate the contract at its discretion, without charges for unutilized term, or penalty of any kind, by giving COUNTY 90 days written notice of such termination. This provision shall not be deemed to conflict with any other provision allowing JOHNSON COUNTY to terminate the contract upon a shorter or lesser notice.

7.6
AIS certifies by signature of its authorized representative on this document that it does and will so long as this Agreement is in effect comply fully with Section 889 of the National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) and Section 5949 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA FY23) and with any additional existing and future "China Tech Prohibitions" promulgated or enacted by the Unites States Government.

7.7
AIS certifies by signature of its authorized representative on this document that it complies with the China Tech Prohibitions and any products used during the professional services will also comply with the "China Tech Prohibitions".

7.8
Further, AIS certifies by signature of its authorized representative on this document that it will not use any products or equipment on this project that does not comply with the "China Tech Prohibitions".

8.1
Notwithstanding any other provisions contained in the contract documents, any amendment to the terms of the contract must be specifically approved by the Commissioners Court of JOHNSON COUNTY and signed by the Johnson County Judge or the COUNTY employee or official to whom authority has been explicitly delegated by the Commissioners Court.

8.2
Notwithstanding any other provision in this Addendum or the associated documents, to the extent AIS is being contracted to provide information technology and services or to maintain and make available information for use by JOHNSON COUNTY and the public, including documents, data, content and records then said documents, data, content and records are and shall be the

exclusive property of JOHNSON COUNTY, TEXAS or the State of Texas or a political subdivision thereof.

8.3

To the extent AIS is being contracted to provide construction management services, construction services or engineering services and to accumulate data and information then AIS shall make any accumulated data, records or information available for use by Johnson County. Accumulated data, records and information are and shall be the property of Johnson County, Texas or the State of Texas.

8.4

At the termination of this Agreement, to the extent AIS possesses or controls access to JOHNSON COUNTY data, upon request by COUNTY, AIS must copy the data to a storage medium in common use at the time or as agreed to by the Information Technology Department of JOHNSON COUNTY and deliver such medium and data to JOHNSON COUNTY INFORMATION TECHNOLOGY DEPARTMENT. AIS recognizes such data is data of the State of Texas or a political subdivision thereof and must be maintained according to the laws of the State of Texas governing the retention and storage of such data. Destruction of such data contrary to law and contrary to the rules promulgated by the Texas State Library and Archives Commission may be subject to criminal prosecution and civil liability.

8.5

All provisions of the agreement are modified such that in no event would JOHNSON COUNTY have less than 120 days from notice of termination of the Agreement to secure any data or records in a useable and readable format. JOHNSON COUNTY'S securing of such data or records is intended to be done and will be allowed to be accomplished in a common and economically efficient method extant at the time of extracting, copying and securing such data and records.

8.6

The parties agree Johnson County is NOT bound and shall not be bound to or liable for any condition, duty, obligation or requirement that is set forth only by reference to additional Documents that are not part of the physical document approved by the Commissioners Court and made part of the minutes of the Johnson County Commissioners Court. Provisions which COMPANY seeks to make terms of the contract or agreement by references to links or websites for contract terms are rejected by JOHNSON COUNTY and CANNOT and WILL NOT be enforced against JOHNSON COUNTY.

8.7

JOHNSON COUNTY is not subject to any provision that may be changed without notice or that may be changed without specific overt consideration and approval by the Commissioners Court of Johnson County acting on that change, modification or amendment to the contact or its terms occurring after the date of the execution of this Addendum.

8.8
Notwithstanding any provision set forth in the Master Services and Purchasing Agreement for Agency or any other document put forth by AIS, JOHNSON COUNTY does not waive any rights or remedies available to a Texas political subdivision pursuant to Texas law. This provision supersedes any contrary provision.

8.9
AIS will not factor its receivables (from JOHNSON COUNTY) to any company or bank without the permission of the Johnson County Commissioners Court.
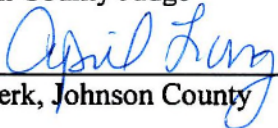
9.1
In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to JOHNSON COUNTY in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and **any provision to the contrary is hereby deleted**. *THE TERMS OF THIS JOHNSON COUNTY CONTRACT TERMS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENT(S) PUT FORTH BY AIS IS HEREBY DELETED.*

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:

Christopher Boedeker
As Johnson County Judge
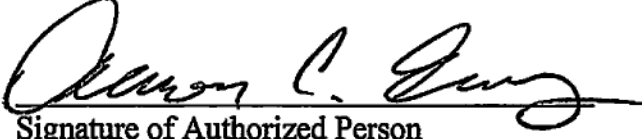
6-10-24
Date

Attest: _____
County Clerk, Johnson County

6-10-24
Date

ACCESS IMAGING SOLUTIONS, LLC.:

(signature)

6/3/2024

Signature of Authorized Person   Date

Aaron C. Emery
Printed Name of Authorized Person

C. O. O.

Position of Access Imaging Solutions, LLC.
Authorized Person