This Master Services Agreement ("**MSA**"), including all exhibits and addenda attached hereto, Sales Orders, Statements of Work, and the Support Agreement (all such terms as defined below) agreed to by the parties (collectively, the "**Agreement**") is effective as of _____[**EFFECTIVE DATE**] (the "**Effective Date**"), between _____[**LEGAL NAME OF CUSTOMER**], an entity with its principal place of business located at _____**[ADDRESS OF CUSTOMER'S PRINCIPAL PLACE OF BUSINESS]** ("**Customer**") and Upland Software, Inc., an entity incorporated in the State of Delaware, with its principal place of business located at 401 Congress Ave., Suite 1850, Austin, Texas, United States 78701, ("**Upland**" or "**Supplier**") and sets forth the terms and conditions under which Upland will make available certain Services and Applications (as defined below), Customer will be permitted to use and access such Services and Applications under 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.

1.2. "**Application**" means the software program, service platform or solution suite supplied by Upland and identified in the applicable Sales Order.

1.3. "**Customer Data**" means the data created, delivered or input by Customer or its Users into the Application or Service for the purpose of using an Application or facilitating Customer's use of an Application.

1.4. "**Documentation**" means user documentation that describes the principles of the operation or functionality of the applicable Application and that are embedded with such Application (*e.g.*, on-line help files).

1.5. "**Enhanced Support Services**" has the meaning set forth in Section 5.2.

1.6. "**Non-User-Based Application**" means an Application that is made available to Customer on a basis other than a per-User basis.

1.7. "**Professional Services**" means any and all 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 or Statement of Work.

1.8. "**Sales Order**" means the order form document for purchases of Services hereunder, including addenda thereto, that are entered into between Customer and Upland from time to time. Upon execution, each Sales Order is governed by and made a part of the Agreement.

1.9. "**Services**" means each SaaS (Software as a Service) Platform, Application, Support Services, and Professional Services, collectively.

1.10. "**Statement of Work**" or "**SOW**" means the ordering document for purchases of Professional Services, including any addenda thereto, that are executed by the parties. Upon execution, each SOW is governed by this MSA and made a part of the Agreement.

1.11. "**Subscription Fees**" means any fees relating to Services and Application (including fees for Enhanced Support Services, User Subscriptions and fees for exceeding Scope Limitations).

1.12. "**Subscription Term**" means the period that Customer has the right to use the Services as they pertain to each Application as set forth in the applicable Sales Order, including the Initial Term and any Renewal Terms.

1.13. "**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 set out in Exhibit B (the "**Support Agreement**").

1.14. "**User-Based Application**" means an Application that: (i) is made available to Customer on a per-User basis, (*i.e.*, a User Subscription must be purchased by Customer for each User that is authorised to access the applicable Application or Service), and (ii) in the case of messaging Applications or Services, is made available to Customer on a usage basis (i.e., Customer is charged based on the number of messages generated or required by Customer and/or its Users).

1.15. "**User Subscription**" means a subscription purchased by Customer that entitles one User to access and use the applicable Services during the applicable Subscription Term.

1.16. "**Users**" means individuals who are authorised by Customer to use the applicable Application or Services, for whom subscriptions to such Application have been purchased (in the case of User-Based Applications), and who have been supplied Upland-issued user identifications and passwords by Customer. "Users" may include, but is not limited to, Customer's employees, consultants, contractors and agents.

1.17. "**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 and whether its operation is immediate or delayed including willfully, negligently or without knowledge of its existence. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, trojans or worms.

2. USE OF THE APPLICATION OR SERVICE

2.1. <u>Sales Orders</u>. Customer's right to use any particular Application or Services is only valid during the period that both the applicable Sales Order and the applicable Subscription Term are in effect.

2.2. <u>Use of the Application</u>. Subject to the terms and conditions of the Agreement, Upland hereby grants to Customer, and Customer hereby accepts from Upland, a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 14.2 (*Assignability*)), non-sublicensable right during the applicable Subscription Term as follows:

2.2.1.   for each User-Based Application, to allow Users to use the Application specified on the applicable Sales Order solely in connection with Customer's internal business operations;

2.2.2.   for each Non-User-Based Application, to allow Users to use the Application in accordance within the scope of use specified in the applicable Sales Order.

2.3.   Use of the Documentation. Subject to the terms and conditions of the Agreement, Upland hereby grants to Customer a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 14.2 (*Assignability*)), non-sublicensable license during the applicable Subscription Term to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with Users' use of the applicable Application in accordance with this MSA.

2.4.   Use Limitations. Customer agrees that it will not exceed the maximum allowed usage (e.g., images, documents, storage or Users) for such Application and Service as specified in the applicable Sales Order or Documentation ("**Scope Limitations**"). Customer agrees that: (i) the maximum number of Users authorised to access and use each User-Based Application will not exceed the number of User Subscriptions purchased for such Application, and (ii) it will not allocate any User Subscription (or share User Subscription) to more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User will no longer have any right to access or use the applicable Services.

2.5.   Inspection of Customer Usage. Upland shall have the right, at Upland's expense and with reasonable prior notice, to audit Customer's use of each Application and audit Customer's records for the purpose of confirming Customer's compliance with the Agreement. Such audit may be conducted no more than once per twelve (12) months and shall be conducted during Customer's normal business hours and in a manner not to disrupt Customer's normal business operation. If the audit reveals that Customer has underpaid any fees to Upland, Customer shall pay to Upland an amount equal to such underpayment within thirty (30) days of the date it receives notice of such underpayment.

3.   **OWNERSHIP**

3.1.   The Services. Except for 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, Service and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, Service and all Documentation and any other part of the Services (created by either party). 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.

3.2.   Customer Data. All rights, title and interest in and to Customer Data are and shall remain the property of Customer. 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 any of Upland's post-termination obligations to Customer, the rights to use, reproduce, store, distribute, modify, publicly display and perform, cache, and transmit Customer Data via the applicable Application solely to the extent reasonably necessary to provide the Services or any portion thereof. Without limiting any of Customer's obligations under a SOW, Customer shall provide Upland, in the form and format and on the schedule specified by Upland, all Customer Data reasonably required for Upland's performance of its obligations under the Agreement and the parties shall comply with the terms and conditions of the Processor Data Protection

Policy attached hereto as Exhibit C regarding the processing of Customer Data.

3.3.   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 Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Service. Improvement Feedback expressly excludes Customer Data.

4.   **CUSTOMER'S RESPONSIBILITIES**

4.1.   Account Credentials. Customer is solely responsible for maintaining the confidentiality of the administrator and User logon user identifications, passwords and account information.

4.2.   Compliance and Use. Customer shall:

4.2.1. be solely responsible for its Users' compliance with this the Agreement;

4.2.2. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to Upland and of the means by which Customer acquired such Customer Data;

4.2.3. be responsible for the results obtained from the processing of Customer Data provided to Upland, including any conclusions drawn from such processing;

4.2.4. use commercially reasonable efforts to prevent unauthorised 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 unauthorised access or use or violation by Customer or its Users of the Agreement;

4.2.5. use each Application only in accordance with the Documentation;

4.2.6. comply with all applicable laws and government regulations; and

4.2.7. cooperate and assist with any actions taken by Upland to prevent or terminate unauthorised use of each Application or any Documentation.

4.3.   Use Restrictions. Except as (i) otherwise explicitly provided in this MSA, or (ii) may be allowed by applicable law which is incapable of exclusion by agreement between the parties, Customer may not, and will not permit or authorize third parties to:

4.3.1.   attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications 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 Applications; or

4.3.2.   access all or any part of the Applications or Documentation in order to build a product or service that competes with the Services or the Documentation;

4.3.3.   license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Applications, Services or Documentation, or otherwise make the Applications or Documentation available to any third-party (e.g., as a service bureau);

4.3.4.   circumvent or disable any security or other technological features or measures of the Applications;

4.3.5. make the Services available to anyone other than Users;

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

4.3.7. use the Services to store or transmit malicious code;

4.3.8. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or

4.3.9. attempt to gain unauthorised access to the Applications or related systems or networks.

4.4. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions shall be set forth on Exhibit A attached hereto and incorporated herein by reference, and Customer agrees to comply with such additional terms and conditions to the extent applicable.

5. MAINTENANCE AND SUPPORT SERVICES

5.1. Standard Support Services. During the Subscription Term and as part of Customer's payment of the Subscription Fees, Upland's standard Support Services shall be provided in accordance with the Support Agreement and subject to the terms of this MSA.

5.2. Enhanced Support Services. For an additional fee, Customer may purchase enhanced or upgraded Support Services (e.g., Gold or Platinum) ("Enhanced Support Services") from Upland by contacting Customer's account representative. The length of time, type of enhanced level, and fees for such Enhanced Support Services shall be set forth on a Sales Order executed by the parties, and such fees may be pro-rated if the upgrade to the Enhanced Support Services is made any time during the then-current Subscription Term. However, Customer may only downgrade from one level of Support Services to another level at the time of renewal. To downgrade from one level of Support Services to another (e.g., either from one Enhanced Support Services level to another or from an Enhanced Support Service level to a standard Support Service level), Customer must provide written notice to Upland at least sixty (60) days prior to the expiration of the then-current Term. Such notice shall specify what level of Support Services desired by Customer, and in the case of a downgrade to another Enhanced Support Services level, Customer shall be obligated to pay Upland's then-current fees for that level of Enhanced Support Services. Unless otherwise expressly set forth in the applicable Sales Order, Fees for Enhanced Support Services provided during Renewal Terms shall be at Upland's then-current rates.

5.3. Customization Support. For an additional annual fee equal to twenty percent (20%) of the charges for any customizations, integrations, or custom reports that Upland develops for and provides to Customer, Upland will maintain and support any such customizations, integrations, or custom reports in accordance with the terms herein. Any such fee will be added to Customer's next usage invoice.

6. PROFESSIONAL SERVICES

6.1. Scope and SOW. For an additional fee, Customer may elect to purchase Professional Services, including, without limitation, 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. For each request for Professional Services hereunder, the parties shall execute a Statement of Work. A SOW may be a separate document executed by the parties or may be incorporated into a Sales Order. Each SOW will specify the fees, scope of work and specific terms of the project(s) or Professional Services to be performed by Upland.

6.2. Travel Expenses. Any and all pre-approved travel expenses, including reasonable transportation, lodging and meal expenses incurred in relation to the provision of the Professional Services will be reimbursed by Customer and are in addition to the specified Professional Services fees. If Customer cancels or reschedules a Professional Services visit less than seven (7) days prior to the scheduled visit, Customer will 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.

7. PAYMENT AND FEES

7.1. Fees. Customer will pay Upland the fees and any other amounts owing under the Agreement, as specified and in the currency set out in the applicable Sales Order and/or SOW, plus any applicable sales, use, excise, or other taxes. Unless otherwise specified in the applicable Sales Order or SOW, in the case of a User-Based Application, all amounts payable to Upland under the Agreement are based on the number of User Subscriptions purchased on the applicable Sales Order and not on actual usage, and such number of User Subscriptions are non-cancellable and non-refundable prior to the end of the relevant subscription term.

7.2. Additional Users or Usage. For User-Based Applications, Customer may, from time to time during the Subscription Term for the applicable Application, purchase additional User Subscriptions, and Upland shall grant access to the Application and the Documentation to such additional Users in accordance with the provisions of the Agreement. For Non-User-Based Applications, Customer may, from time to time during the Subscription Term for the applicable Application, to the extent specified in the applicable Sales Order or in accordance with Upland's then-current applicable policies, purchase rights to exceed some or all of the then-applicable Scope Limitations; provided, however, that Customer acknowledges that certain Applications may not allow an increase of any or all elements of the applicable Scope Limitations.

7.3. Renewal Fees. Upon the expiration of the Initial Term or a Renewal Term (as defined in Section 8.2), Upland may increase the Service fees, including, without limitation, any Subscription Fees and Enhanced Support Services fees, or charge any new fees, by giving Customer notice (which may be by email) of any such increases at least seventy-five (75) days' prior to the end of the applicable Initial Term or the then-current Renewal Term (as defined in Section 8.2) as may be detailed in an updated Sales Order. Customer will only be entitled to discounts granted for a multi-year commitment if the applicable Renewal Term is for a period equal to or greater than such multi-year commitment. Any other discounts offered for the Initial Term do not apply to Renewal Terms unless expressly provided in the applicable Sales Order.

7.4. Invoices and Payment Terms. The Subscription Fees will be invoiced as set out in the Sales Order The first payment will be invoiced on or after the Effective Date Fees for additional User Subscriptions or other modifications to the Scope Limitations will be invoiced upon receipt of Customer's request for such purchase. If such additional User Subscriptions are purchased by Customer part way through the Initial Term or any Renewal Term, such fees shall be pro-rated for the remainder of the Initial Term or then-current Renewal Term following completion of a revised Sales Order. Fees for Professional Services will be invoiced upon execution of the applicable SOW and revised Sales Order. Any Professional Service fees paid by Customer to Upland and remaining unused at the end of twelve (12) months from the date of invoice, will expire and be retained by Upland. Customer will

pay all amounts due within thirty (30) days of the date of the applicable invoice. Customer acknowledges that Subscription Fees for Renewal Terms are due on or by the first day of such Renewal Term. 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, provide a detailed description of the reasons for the objection, and pay the portion of the invoice 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.

7.5.   Late Payments. Any undisputed amount not paid when due will be subject to interest accrued at a rate of 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded monthly from the date due until the date paid. Customer will 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 amount that is not paid when due. In the event of default in the payment of any undisputed invoices, installments or interest for a period in excess of sixty (60) days past their due date, Upland may, without notice or demand, declare the entire principal sum payable during the Term under all outstanding Sales Orders and SOWs subject to this MSA immediately due and payable. Amounts due from Customer under the Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason.

7.6.   Taxes. Other than net income taxes imposed on Upland, Customer will pay any and all taxes (including, without limitation, any sales, use, and value-added taxes), duties, and other governmental charges (collectively, "Taxes") resulting from the Agreement, unless Customer provides Upland with a valid tax exemption or a properly completed direct pay certificate, Customer will pay any additional taxes as are necessary to ensure that the net amounts received by Upland after all such taxes are paid are equal to the amounts that Upland would have been entitled to in accordance with the Agreement as if the taxes did not exist, regardless of whether such taxes were included on the initial applicable invoice to Customer.

8.   TERM, RENEWAL AND TERMINATION

8.1.   Agreement Term. This MSA will commence upon the Effective Date and continue until the Subscription Term for each Sales Order has expired or is otherwise terminated in accordance with the terms of the applicable Sales Order unless this MSA terminated earlier as set forth herein.

8.2.   Sales Order Term. The term for each Sales Order shall commence on the effective date of the applicable Sales Order (or, if no effective date is specified, on the date the Sales Order has been executed by both Customer and Upland) and shall be in effect for the term specified in the Sales Order provided, that if no such term is indicated in the Sales Order, the initial term shall be for one year (the "**Initial Term**"). The term of each Sales Order will automatically renew for successive periods equal to the length of the Initial Term or any other successive period(s) to which the parties agreed pursuant to the applicable Sales Order (each, a "**Renewal Term**"), unless a party provides written notice sixty (60) days in advance of the expiry of the Initial Term or then-current Renewal Term of its desire to amend the duration of the Renewal Term or terminate the Sales Order.

8.3.   SOW Term. Each SOW will be in effect for the time period specified on the applicable SOW.

8.4.   Termination for Material Breach. Either party may immediately elect to terminate the Agreement or a Sales Order or SOW if: (i) the other party breaches any material term or condition of the Agreement or the applicable SOW and fails to

cure the breach within thirty (30) days after receiving written notice of the breach, or (ii) if the other party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors by providing written notice. At the aggrieved party's election, such termination will apply only to the applicable Sales Order or SOW and related Services for a particular Application and not to Sales Orders for or SOWs related to other Applications governed by this MSA. Termination of the Agreement will terminate any then-outstanding Sales Orders and SOWs. In the event of termination as a result of Customer's failure to comply with any of its obligations under this MSA, Customer shall be obligated to pay for Subscription Fees and fees for Professional Services rendered. Termination of the Agreement or any Sales Order or SOW shall be in addition to and not in lieu of any equitable remedies available to Upland.

8.5.   Suspension. Upland reserves the right, in addition to any of its other rights or remedies, to suspend performance of the Services, without liability to Customer, upon occurrence of the following events:

8.5.1.   upon written notice to Customer if Customer's account is thirty (30) days or more overdue for payment (except with respect to charges then under reasonable and good faith dispute), until Upland receives all amounts due; or

8.5.2.   immediately upon Upland's good-faith belief that the Customer is breach of its obligations under this MSA where such breach adversely impacts the performance or security of the Services, Upland's systems or data, or violates applicable law.

Such suspension shall not place Upland in breach of its obligations to provide the Services in accordance with the Agreement and shall not relieve Customer from paying the fees in accordance with the terms of the Agreement. Customer's Instance will not be restored if reconnection to the Services takes place after sixty (60) days from the date of suspension. As used in this Section 8.5, "Instance" means the database within the Services for Customer to manage Customer Data.

8.6.   Transition Assistance. Following the termination of the applicable Sales Order, provided Customer makes a written request within fourteen (14) days before the effective date of termination and subject to the then-current Professional Service fees on a time and materials basis, Upland may offer transition assistance, which may include, to the extent practicable, an export of Customer Data from the applicable Application or Service. 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 9), and Customer is granted a personal, non-sublicensable, nonexclusive, nontransferable, 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 8.58.6 and or on notice from Upland.

8.7.   Post-Termination Obligations. If Customer terminates a Sales Order or SOW for material breach by Upland, Upland shall refund Customer any prepaid Subscription Fees for the unused portion of the Services. If Upland terminates a Sales Order or SOW for material breach by Customer, (a) Customer will pay to Upland any fees or other amounts that have accrued prior to the effective date of the termination pursuant to each such Sales Order or SOW, including, without limitation, any unpaid fees for

the unused portion of the Services. Upon expiration or termination of the Agreement for any reason, (a) except as expressly set forth in this MSA, any and all liabilities accrued prior to the effective date of the termination will survive, and (b) with respect to a terminated Sales Order, Customer will provide Upland with a written certification signed by an authorised Customer representative certifying that all use of the applicable Application and Documentation ordered pursuant to the applicable Sales Order(s) by Customer has been discontinued.

8.8.   Survival. Sections 2.5 (Inspection of Customer Usage), 3 (Ownership), 4 (Customer's Responsibilities), 7.1 (Fees). 7.4 (Invoices and Payment Terms), 7.5 (Late Payments), 7.6 (Taxes), 8.6 (Transition Assistance), 8.7 (Post-Termination Obligations), 8.8 (Survival), 9 (Confidentiality), 10.2 (Disclaimers), 11 (Indemnification), 12 (Limitations of Liability), 14 (General) and Customer's obligations arising under Exhibit A, if any, shall survive the termination or expiration of the Agreement.

9.   CONFIDENTIALITY

9.1.   Definition. As used herein, "Confidential Information" means all confidential information disclosed by or otherwise obtained from a party ("**Disclosing Party**") to or by the other party ("**Receiving Party**"), whether orally, visually or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's "Confidential Information" includes Customer Data. Upland's "Confidential Information" includes each Application, all Documentation and the product of all Services and Upland's financial, security, architectural or similar information. "Confidential Information" of each party shall include the terms and conditions of the Agreement as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by or on behalf of such party.

9.2.   Protection of Confidential Information. Each party agrees to maintain Confidential Information in confidence and not to disclose it or any portion of it, except to its and its Affiliates' employees and consultants who have a need to know such Confidential Information and are bound by obligations of confidentiality similar to those herein, for a period of three (3) years after the expiration or termination of the Agreement, using the same care and discretion to avoid disclosure, publication, or dissemination of the Confidential Information as it uses with its own confidential or proprietary information, but in no event less than reasonable care. Notwithstanding the foregoing, neither party shall have liability to the other with regard to any Confidential Information that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a third party having the legal right to do so and without restriction on disclosure; (d) is independently developed by the Receiving Party without the aid, application or use of the Confidential Information; or (e) is required to be disclosed by law or court order; provided, that the Receiving Party shall provide reasonable advance notice to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

10.   WARRANTIES

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

10.1.1. this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and

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

10.2.   Upland Disclaimers. Subject to Upland's obligation to comply with the Support Agreement, Upland:

10.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Customer's requirements; and

10.2.2. is not 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 Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

10.3.   Upland Additional Warranty. Upland warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the Agreement.

10.4.   Customer Additional Warranty. Customer warrants that it has (or in the case of its future customer activities, will obtain) and will maintain all necessary licences, consents and permissions necessary for Upland, its contractors and agents to perform their obligations under the Agreement.

10.5.   General Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

11.   INDEMNIFICATION

11.1.   Indemnification by Upland. Upland shall defend Customer against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of any Application or Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against Customer, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives Upland written notice of the Claim; (b) gives Upland sole control of the defense and settlement of the Claim (provided that Upland may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to Upland all reasonable assistance, at Upland's expense.

11.2.   Exclusions from Obligations. Upland will have no obligation under this Section 11 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 if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application by Customer for purposes not intended or outside the scope of the license or service description granted to Customer herein; (c) Customer's failure to use an Application or Service in accordance with 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 or authorised in writing by Upland where such infringement or misappropriation would not have occurred absent such modification.

11.3.   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 11.1 (*Indemnification by Upland*), then Upland will 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 will (c) terminate Customer's right with respect to the Application or Service and refund to Customer all unused Subscription Fees pre-paid by Customer with respect to such Application or Service.

11.4.   Limited Remedy. This Section 11 states Upland's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property rights by any Application or Service.

11.5.   Indemnification by Customer. Customer shall defend save and hold harmless Upland against any 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 Claim; provided, that Upland (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release Upland of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

11.6.   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.

12.   LIMITATIONS OF LIABILITY.

12.1   General Limitations; Exclusions. Except as expressly and specifically provided in this MSA all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this MSA. However, nothing in this MSA excludes or limits the liability for:

12.1.1. death or personal injury caused by either party's negligence;

12.1.2. either party's fraud or fraudulent misrepresentation;

12.1.3. liability arising out of Customer's breaches of Section 4 (*Customer's Responsibilities*);

12.1.4. liability arising out of Customer's breaches of Section 7 (*Payment and Fees*);

12.1.5. either party's indemnity obligations; or

12.1.6. any other liability which cannot lawfully be excluded or limited.

12.2.   Indirect Damages. Subject to Section 12.1 (*General Limitations; Exclusions),* in no event shall either party be liable in contract, tort (including negligence for breach of statutory duty) or otherwise howsoever for: (a) any direct or indirect loss of profit; or (b) direct or indirect loss of business; or (c) direct or indirect loss of goodwill or depletion in goodwill; or (d) direct or indirect loss of contracts; or (e) direct or indirect loss of revenues; or (f) direct or indirect loss or corruption of data or information; or (g) direct or indirect loss of anticipated savings; or (h) direct or indirect pure economic loss; or (i) any indirect increased costs or expenses; or (j) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the Agreement even if the other has been advised of the possibility of such damages.

12.3.   Cap on Liability. Subject to Section 12.1 (*General Limitations; Exclusions)* and 12.2 (Indirect Damages), in no event shall either party's aggregate, cumulative liability arising out of or related to this Agreement, whether in contract, tort, or under any other theory of liability exceed the total amount of Subscription Fees payable by Customer in the twelve (12) months preceding the incident giving rise to the claim.

12.4.   Independent Allocations of Risk. Each provision of this MSA that provides for a limitation of liability, warranty or exclusion of liability for damages is designed at allocating the risks under this MSA in relation to the available insurance. Such risk assessment is reflected in the pricing offered to Customer and is an essential element of the bargain between the parties.

13.   PUBLICITY

Neither party shall use the other party's name, trademark, or logo without the other party's prior written permission. Once Upland has obtained Customer's written consent to issue any press release or other public disclosure, Upland may subsequently release or issue such approved information without the need to obtain additional approval from Customer for each such subsequent identical or substantially similar use. Notwithstanding the foregoing, (i) each party shall be permitted to disclose any details regarding this relationship to the extent required by law, and (ii) subject to Customer's brand guidelines, Upland may include Customer name and logo, in Upland's customer lists so long as Customer is listed along with Upland's other customers of the Services.

14.   GENERAL

14.1.   Relationship. Upland will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement.

14.2.   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. Notwithstanding the preceding sentence, each party may assign the Agreement without the other party's prior written consent in the case of a merger, acquisition or other change of control only where the assignee is not a direct competitor of the other party, or to an Affiliate, and in such event the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.3.   Subcontractors. Upland may utilize subcontractors or other third parties to perform certain duties under the Agreement

so long as Upland remains responsible for all of its obligations under the Agreement.

14.4.   Notices. Any notice or report required or permitted to be given or made under this MSA by either party will 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 this MSA, one (1) day after being sent via email. Notices will 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 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

Upland may broadcast notices or messages through the applicable Application or by posting notices or messages on Upland's web site to inform Customer of changes to the Services, or other matters of importance; Upland shall inform Customer of such broadcast by e-mail.

14.5.   Force Majeure. Neither party shall be liable in damages or have the right to terminate the Agreement or any Sales Order or SOW for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, government restrictions (including the denial or cancellation of any export of other necessary license), wars, threats of or acts of terrorism, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, internet service provider or communications failure).

14.6.   Dispute Resolution. The parties will attempt to resolve all disputes, claims, or controversies arising under or related to the Agreement or its subject matter or any right or obligation created by the Agreement (each, a "Dispute") through good faith negotiations conducted by the representatives of the parties designated below. The party asserting the Dispute will give prompt written notice to the other party describing the Dispute in reasonable detail. If the Dispute has not been resolved within thirty (30) days after commencing such negotiations, then the parties may resolve the Dispute through judicial action.

14.7.   Governing Law. The Agreement shall be governed by the laws of the State of Texas, without reference to conflict of laws principles. Any suit to enforce the Agreement shall be brought exclusively in the courts located in Austin, Texas and the parties hereby submit to the personal jurisdiction of such courts and waive any venue objection.

14.8.   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 will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of the Agreement.

14.9.   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.

14.10.   Counterparts. Each portion of the Agreement (e.g., this MSA, each Sales Order or SOW) 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 authorised signatory (manuscript signature or using electronic signature) will be deemed an original.

14.11.   Entire Agreement. This MSA and the exhibits or attachments, if any, 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 the MSA and any Sales Order or SOW, the terms and conditions of the 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 or SOW, as applicable, shall prevail. No usage of trade or other regular practice or method of dealing between the parties will 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 authorised signatory of the party against whom enforcement is sought. Upland will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to the Agreement (whether or not it would materially alter the Agreement) that is proffered by Customer in any receipt, purchase order, acceptance, confirmation, correspondence, or otherwise, unless Upland specifically agrees to such provision in writing and it is signed by an authorized agent of Upland.

14.12.   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 will use reasonable efforts to promptly notify the other party.

14.13.   Export Compliance. The Services and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any government denied-party list. Customer shall not permit Users to access or use any Application or Service in a U.S. or UK embargoed country (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. or UK export law or regulation.

14.14.   Government Rights. The Application is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Application and Documentation as are granted to all other end users under license, in accordance with (i) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (ii) 48 C.F.R. §12.212, with respect to all other U.S. Government Customers and their contractors.

14.15.   Technical Data. Customer shall not provide to Upland any Technical Data as that term is defined in the International Traffic

in Arms Regulations ("ITAR") at 22 CFR 120.10. Customer shall certify that all information provided to Upland has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on Upland's products.

ON BEHALF OF UPLAND SOFTWARE, INC.

By:

Print Name:

Title:

ON BEHALF OF [<mark>LEGAL NAME OF</mark> <mark>CUSTOMER</mark>]:

By:

Print Name:

Title:

EXHIBIT A
PRODUCT-SPECIFIC TERMS

Upland CXM Applications

If Customer orders any Adestra, Hipcricket, Mobile Commons, Rant & Rave or Waterfall Applications (each, a "**CXM Application**") under this MSA, the following additional terms and conditions shall govern such use:

1. **ACCEPTABLE USE POLICY**.

    1.1.   Customer Responsibilities. 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.   Use Restrictions. 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.   Blacklists; Complaints. In the event that any short 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 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.   Health Insurance Portability and Accountability Act & Health Information Technology for Economic and Clinical Health Act (collectively, "**HIPAA**"). 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.   Telephone Consumer Protection Act ("**TCPA**"). 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.   Carriers & Aggregators. 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.   Payment Card Industry Data Security Standard ("**PCI DSS**"). 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.   Programs. 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.

Clickability Application

If Customer orders the Clickability Application under this MSA, 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 above.

RightAnswers Application

If Customer orders the RightAnswers Application under this MSA, 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.

EXHIBIT B
SUPPORT AGREEMENT

This Support Agreement ("**Support Agreement**"), including all addenda attached hereto, is made a part of and is incorporated into the terms of the Master Services Agreement ("**MSA**") currently in effect between the parties. All capitalized terms not defined herein shall have the meaning ascribed to them in the MSA.

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 will 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 will 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 will 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 terms of this Support Agreement 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 will 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 will follow the instructions and suggestions of Upland's support personnel when servicing the Application.

iii. **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 Customer Data.

iv. **Updates**. Customer acknowledges and agrees that Updates provided by Upland pursuant to this Support Agreement 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, this Support Agreement 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 will be included in calculating Availability if such downtime or degradation is directly caused by any of the following ("**Exceptions**"):

    a. Customer's or any of its Users' use of the Application in a manner inconsistent with the Documentation;
    b. failures of Customer's or its Users' Internet connectivity not caused by Upland;
    c. Internet or other network traffic problems other than problems arising in or from networks actually provided or controlled, or required to be provided or controlled, by Upland; or
    d. Scheduled Downtime.

iii. **Scheduled Downtime**. Upland shall notify Customer and its Users with whom Upland has communicated at least 72 hours in advance of all scheduled downtime of the Application in whole or in part ("**Scheduled Downtime**") (a) not be scheduled between the hours of 8 a.m. and 9 p.m., Eastern Time, Monday-Friday (unless otherwise agreed by the parties in a signed writing), and (b) occur more frequently than 15 hours per calendar month.

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

6. **Definitions**:

   i.   "**Defect**" means a failure of the Application to substantially conform to the functional specifications set forth in the Documentation (as defined in the 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 C
PROCESSOR DATA PROTECTION POLICY

This Processor Data Protection Policy (the "**Policy**"), including Attachment 1, supplements the applicable Master Services Agreement and any associated Sales Orders and Statements of Work (collectively, the "**Agreement**") by and between Upland and Customer (each a "**Party**" and collectively the "**Parties**") as such may be amended from time to time.

1   DEFINITIONS AND INTERPRETATION.

DEFINITIONS

1.1   Capitalised terms shall have the meaning set out in this Policy, or to the extent that any such terms are not defined in this Policy, shall have the meaning set forth in the Agreement.

Customer Personal Data	means Personal Data which is:
	(a) transmitted by or on behalf of Customer to, or is otherwise Processed by, Upland under the Agreement; or
	(b) generated under the Agreement;
Controller	has the meaning set out in the Data Protection Legislation;
Data Protection Legislation	means the GDPR or any applicable replacement legislation from time to time (including replacement legislation in the United Kingdom as a result of the withdrawal of the United Kingdom from the European Union);
Data Subject	has the meaning set out in the Data Protection Legislation;
GDPR	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of national persons with regard to the processing of personal data;
Lawful Grounds	means the principles and conditions relating to processing of Personal Data set out in the Data Protection Legislation;
Personal Data	has the meaning set out in the Data Protection Legislation;
Personal Data Breach	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data;
Processing	has the meaning set out in the Data Protection Legislation and "**Process**" and "**Processed**" shall be construed accordingly;
Processing Activities	has the meaning given in section 2.1.2;
Processing Security Measures	has the meaning given in section Error! Reference source not found.3.1.3;
Processor	has the meaning given in the Data Protection Legislation;
Security Considerations	means, in relation to the Processing Security Measures:
	(a) the state of the art, the costs of implementation, the nature, scope, context and purposes of the Processing Activities as well as the risk of varying likelihood and severity for the rights and freedoms of the relevant Data Subjects; and
	(b) the risks that are presented by the Processing Activities, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data transmitted, stored or otherwise Processed;
Services	has the meaning given to it in the Agreement;
Standard Contractual Clauses	means the agreement which may be executed by and between Customer and Upland and attached hereto as Attachment 1 pursuant to the European Commission's decision (C(2010)593) of February 5, 2010 on standard contractual clauses for the transfer of Personal Data to Processors established in third countries that do not ensure an adequate level of protection or any

	replacement European Commission standard contractual clauses agreed by the Parties in accordance with section 5;
Sub-Contractor	means any third party (including a Supplier Affiliate) to which the Supplier has subcontracted any Services, including a third party to whom a subcontractor further delegates any subcontracted duties or obligations;
Sub-Processor	has the meaning given in section 3.33.3;
Supervisory Authority	has the meaning given in the Data Protection Legislation; and
Upland Affiliate	means any entity that owns or controls, is owned or controlled by, or is under common control or ownership with Upland (where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by contract, exercise of voting rights, common management, or otherwise).

INTERPRETATION

1.2 References in this Policy to the GDPR or specific Articles or Chapters of the GDPR shall be construed as references to the GDPR or relevant Articles or Chapters of the GDPR or to the then-current Data Protection Legislation or the equivalent provisions in the then-current Data Protection legislation (as appropriate).

1.3 Including and its derivatives (such as "include" and "includes") means "including without limitation" unless otherwise specified.

1.4 References to this Policy shall be deemed to include Attachment 1 unless the context requires otherwise.

COMMENCEMENT

1.5 On and from the date of mutual execution of the Agreement:

1.5.1 the obligations set out in any previous agreement between the parties with respect to the subject matter contained herein shall cease to apply; and

1.5.2 the obligations set out in this Policy shall take effect.

2   PROCESSING ACTIVITIES AND STATUS OF CUSTOMER AND UPLAND.

PROCESSING ACTIVITIES

2.1 Customer and Upland acknowledge that:

2.1.1 Upland will perform Processing activities in relation to Customer Personal Data as part of the Services, the subject-matter, duration, nature and purpose the Processing, type of Customer Personal Data being Processed, and categories of Data Subjects are described more fully in the table below (the "**Processing Activities**"); and

2.1.2 in respect of such Processing Activities, the Customer is the Controller and Upland is the Processor for the purposes of the Data Protection Legislation.

Subject matter of the Processing	The Personal Data that Processor processes on behalf of Customer.
Duration of the Processing	Processor is deemed to have commenced the respective processing of Personal Data under each of the Agreement(s) on the effective date of the Agreement(s) and will end such Processing upon termination of the Agreement(s).
Nature and purpose of the Processing	The provision of services pursuant to the Agreement(s).
Type of Personal Data being Processed	Processor will respectively process those categories of Personal Data expressly identified in Article 4 of the GDPR, as well as other Personal Data provided by, or collected on behalf of, Customer pursuant to the Agreement(s).
The categories of Data Subjects	Processor will Process Personal Data related to Customer's employees, customers, suppliers, or end users.

2.2   The Customer is solely responsible for the accuracy, quality and legality of the Customer Personal Data and Customer warrants, represents and undertakes to Upland that it has Lawful Grounds for processing the Customer Personal Data.

2.3   Each of Customer and Upland shall at all times comply with its obligations under the Data Protection Legislation.

2.4   Customer shall ensure that its instructions to Upland in connection with or arising out of the Processing of Customer Personal Data on Customer's behalf are and will at all times be lawful and shall not contravene Data Protection Legislation.

COOPERATION WITH SUPERVISORY AUTHORITY AND DATA SUBJECTS

2.5   Nothing in this Agreement shall prevent Upland from:

2.5.1   complying with its obligations under the Data Protection Legislation to cooperate with, or provide assistance or information to, a Supervisory Authority;

2.5.2   complying with any order, direction or instruction by a Supervisory Authority (whether relating to Customer or Upland) in respect of the Services (including the Processing Activities); and/or

2.5.3   responding to or defending any action taken against Upland by a Data Subject or Supervisory Authority.

3   UPLAND'S OBLIGATIONS.

PROCESSING OF CUSTOMER PERSONAL DATA

3.1   Upland shall:

3.1.1   process the Personal Data only in accordance with Customer's documented instructions from time to time, including with regard to transfers of Customer Personal Data to a third country or an international organisation, unless required to do so by applicable law; in such a case, Upland shall inform Customer of that legal requirement before Processing, unless that applicable law prohibits such information on important grounds of public interest;

3.1.2   ensure that employees, contractors or agents of Upland who Process Customer Personal Data to enable Upland to perform its obligations under this Policy or the Agreement are bound by appropriate obligations of confidentiality or are under an appropriate statutory obligation of confidentiality;

3.1.3   Upland shall implement appropriate technical and organisational measures to ensure a level of security in respect of the Customer Personal Data that is appropriate to the risk associated with the Processing Activities, having regard to the Security Considerations (the "**Processing Security Measures**");

3.1.4   comply with those obligations set out in sections 3.33.3 to 3.5 (inclusive) in relation to the engagement of Sub-Processors;

3.1.5   taking into account the nature of the Processing Activities, assist Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests for exercising a Data Subject's rights in accordance with Chapter III (Rights of the Data Subject) of the GDPR;

3.1.6   assist Customer in ensuring compliance with the obligations under Articles 32 (security of processing), 33 (notification of a personal data breach to the Supervisory Authority), 34 (notification of a personal data breach to the Data Subject), 35 (data protection impact assessments) and 36 (prior consultation) of the GDPR, taking into account the nature of the Processing Activities and the information available to Upland and provided always that nothing in this sub-section shall be oblige Upland to provide assistance which does not relate directly to the Services (including Processing Activities) performed pursuant to this Agreement;

3.1.7　at the choice of Customer, delete or return all the Customer Personal Data following the earlier of completion of the Services with respect to which the Processing of Customer Personal Data relates or termination or expiry of this Agreement and delete existing copies of such Customer Personal Data unless Upland is required to retain copies to comply with applicable law;

3.1.8　make available to Customer all information necessary to demonstrate compliance with its obligations set out in this section 3 (Upland's Obligations) and allow for and contribute to audits, including inspections in respect of the same, conducted by Customer or another auditor mandated by Customer, provided that:

(a)　the first audit or inspection in any 12-month period shall be at no cost to the Customer. For any additional audit or inspection in the same 12-month period, Upland shall be entitled to charge the Customer a reasonable fee in accordance with section 3.2.23.2.3;

(b)　Customer shall, if requested by Upland, procure that its third-party auditors enter into confidentiality undertakings with Upland that are no less onerous than those set out in this Agreement;

(c)　Customer provides reasonable prior notice of such request for an audit or inspection;

(d)　Customer shall take steps to ensure that any such audit or inspection shall not be unreasonably disruptive to Upland's business; and

(e)　nothing in this section shall permit Customer or its auditors to make unaccompanied site visits or to logically access Upland's IT systems; and

3.1.9　inform Customer immediately if it considers in its opinion that any of Customer's instructions infringe Data Protection Legislation.

3.2　Notwithstanding anything to the contrary in the Agreement, Upland shall be entitled to charge a reasonable fee (calculated on a time and materials basis at the rates agreed by the Parties from time to time or in accordance with any rate cards), or as otherwise agreed by the Parties for:

3.2.1　the assistance set out at section 3.1.53.1.5 and, save to the extent arising from a Data Security Breach by Upland with respect to its obligations to provide assistance to the Customer to ensure compliance with its obligations under Articles 33 (notification of a personal data breach to the Supervisory Authority), 34 (notification of a personal data breach to the Data Subject), the assistance set out at section 3.1.63.1.6;

3.2.2　work undertaken in relation to any additional audit under section 3.1.83.1.9; and

3.2.3　any request by Customer for assistance, information, reporting and/or other project activity relating to Customer's other obligations under the Data Protection Legislation including, without limitation, relating to accountability and transparency and data portability.

APPOINTMENT OF SUB-PROCESSORS

3.3　The Customer consents to Upland engaging subcontractors to process the Customer Personal Data on its behalf ("**Sub-Processors**"). Upland shall ensure Sub-Processors are subject to contractual obligations which are the same as or equivalent to those imposed on Upland under section 3.13.1. 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). Upland shall be responsible for the performance of its Sub-Processors.

3.4 If Upland, in its sole discretion, cannot provide any such alternative arrangements (as referred to at section 3.33.3) or if Customer does not agree to any such alternative arrangements if provided, Upland may terminate this Agreement. Termination shall not relieve Customer of any fees owned to Upland under the Agreement.

3.5 By entering into the Standard Contractual Clauses, the Customer consent set out at section 3.33.3 will constitute Customer's prior written consent to the subcontracting by Upland of the Processing of Customer Personal Data if such consent is required under the Standard Contractual Clauses.

4 DATA BREACH NOTIFICATION.

4.1 Upland shall notify Customer without undue delay after having become aware of a Personal Data Breach.

4.2 Performance by Upland of obligation set out at this section 4 shall not be construed as an acknowledgement by Upland of any fault or liability with respect to the Personal Data Breach.

5 INTERNATIONAL TRANSFERS.

5.1 Upland Software, Inc. self-certifies to and complies with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, as administered by the US Department of Commerce, and Upland shall ensure that it maintains its self-certifications to and compliance with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks with respect to the Processing of Personal Data that is transferred from the European Economic Area and/or Switzerland to the United States.

5.2 Upland shall be entitled to transfer Customer Personal Data to a third country or international organisation provided that any such transfer is carried out in compliance with the Data Protection Legislation, including through use of its certifications under EU-U.S. and Swiss-U.S. Privacy Shield Frameworks and the Standard Contractual Clauses attached as Attachment 1 to this Policy.

5.3 If at any time a decision under Data Protection Legislation is made or revoked in relation to:

5.3.1 whether a jurisdiction or body provides an adequate level of protection for the rights and freedoms of Data Subjects in relation to the Processing of Personal Data; or

5.3.2 the means of demonstrating adequate safeguards are in place in relation to a transfer of Personal Data to a third country,

and any such decision or revocation requires the Parties to implement alternative safeguards or measures, the Parties shall discuss and agree alternative measures, or where no alternative measures or safeguards are available, any necessary changes to the Services in order for the Parties to remain compliant with Data Protection Legislation.

6 CONFLICT

In the event of a conflict between the terms and conditions of this Policy and the Agreement, the terms and conditions of this Policy shall supersede and control.

Attachment 1 to the Processor Data Protection Policy

Standard Contractual Clauses

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection.

Name of the data exporting organisation:

Address: ....

Tel. ....; fax ....; e-mail: ....

Other information needed to identify the organisation

....

(the data exporter)

And

Name of the data importing organisation: Upland Software, Inc.

Address: 401 Congress Avenue, Suite 1850, Austin, TX 78701-3788

Tel. 1-833-875-2631-1;   fax 512-960-1001;   e-mail: privacy@uplandsoftware.com

Other information needed to identify the organisation:

....

(the data importer)

each a 'party'; together 'the parties',

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

(a)   *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject'* and *'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b)   '*the data exporter*' means the controller who transfers the personal data;

(c)   *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d)   *'the sub-processor'* means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e)   '*the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f)   *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1.   The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2.   The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3.   The data subject can enforce against the sub-processor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

4.   The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

(a)   that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b)   that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c)   that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;

(d)   that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e)   that it will ensure compliance with the security measures;

(f)   that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g)   to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h)   to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i)   that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j)   that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

(a)   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b)   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(c)   that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;

(d)   that it will promptly notify the data exporter about:

     (i)   any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

     (ii)   any accidental or unauthorised access, and

     (iii)   any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

(e)   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

(f)   at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

(g)   to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

(h)   that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;

(i)   that the processing services by the sub-processor will be carried out in accordance with Clause 11;

(j)   to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1.   The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

2.   If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

3.   If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1.   The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

        (a)   to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

        (b)   to refer the dispute to the courts in the Member State in which the data exporter is established.

2.   The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1.   The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2.   The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3.   The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established, namely………………..

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Sub-processing

1.   The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which

imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses[1]. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

2.   The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

3.   The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely………………...

4.   The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

<center>*Clause 12*</center>

<center>**_Obligation after the termination of personal data processing services_**</center>

1.   The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2.   The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): ....

Position: ....

Address: ....

Other information necessary in order for the contract to be binding (if any):

Signature ....

(stamp of organisation)

On behalf of the data importer:

Name (written out in full): Rochelle Delley

Position: VP, Security & Compliance and Data Protection Officer

Address: 401 Congress Avenue, Suite 1850, Austin, TX 78701-3788

Other information necessary in order for the contract to be binding (if any): (stamp of organisation)

Signature ....

(stamp of organisation)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

Appendix 1 forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures any additional necessary information to be contained in this Appendix.

Data exporter
The data exporter is   (please specify briefly your activities relevant to the transfer):
………
……………………………

Data importer
The data importer is Upland Software, Inc. (please specify briefly your activities relevant to the transfer):
………
…………………………

Data subjects
The personal data transferred concern the following categories of data subjects (please specify):
………
…………………………

Categories of data
The personal data transferred concern the following categories of data (please specify):
………
…………………………

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):
………
…………………………

Processing operations
The personal data transferred will be subject to the following basic processing activities (please specify): [Compute, storage and content delivery on the Upland application.]
………
…………………………

DATA EXPORTER

Name: …………………………….

Authorised Signature ……………...

DATA IMPORTER

Name: Rochelle Delley

Authorised Signature ……………..

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

Appendix 2 forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The technical and organisational security measures implemented by the data importer are as described in the EU Data Processing Policy entered into between the data importer and the data exporter which is attached to the master agreement between the parties.

DATA EXPORTER

Name: ……………………………..

Authorised Signature ……………...

DATA IMPORTER

Name: Rochelle Delley

Authorised Signature ……………..