

UPSTIK.COM TERMS OF USE

Please read these Standard Terms of Use (“Terms”) carefully. By using the Service (defined below) or signing up for an account, you are agreeing to these Terms, which will result in a legal agreement between you (“you”, “you’re” or “Customer”) and Upstik.com (“Upstik,” “we,” or “us”).

BY CLICKING THE "AGREE" BUTTON AND USING UPSTIK.COM, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT, IF YOU ARE ACTING AS AN INDIVIDUAL, YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; (C) REPRESENT THAT, IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU HAVE THE LEGAL AUTHORITY TO ACT AND TO ENTER INTO A BINDING AGREEMENT ON BEHALF OF THAT ENTITY; AND (D) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE UPSTIK.COM.

1 Tools

- 1.1 About Upstik.com. Upstik.com is a platform through which Upstik provides businesses with consumer marketing tools and tools that involve access to and use of the electronic devices of third parties, including but not limited to text and other messaging, QR codes, and notifications (the “Tools”). “Tools” means the products and services provided by Upstik or its Affiliates via Upstik.com. You gain access to a set number of Tools depending on the monthly marketing plan that you select. You will be required to select your plan (e.g., Basic, Silver, Platinum) (together, your “Plan”) from the options posted on Upstik.com based on your anticipated use of the Tools. Each Plan offers different pricing and feature options and has varying usage limits. Tools include products and services that provide both (a) platform services, including access to Upstik’s messaging platform and (b) where applicable, communications services used in connection with Upstik’s messaging platform. All Tools, other available products and pricing on Upstik.com may change at any time at Upstik’s sole discretion, without notice. The Tools displayed on Upstik.com can be accessed by any person who purchases a Plan, subject to Upstik’s sole and absolute discretion. Please note that not all price quotes displayed on Upstik.com are in U.S. Dollars; the currency designated may change depending on how or from where you access Upstik.com . The final price of a Plan will be provided immediately prior to payment. Upstik makes no representations nor warranties that advertised price quotes represent the final total of a Plan. Upstik is not responsible for any costs incurred by you in conjunction with use of Upstik.com, including but not limited to costs associated with text messaging or transactions which arise from the use of the Tools. As used in these Terms, “Affiliate” means any entity that directly or indirectly controls or is controlled by, or is under common control with, the party specified. For purposes of this definition, “control” means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.2 Provision of the Tools. Upstik will: (a) provide access to the Tools to you subject to this Agreement and the applicable Documentation (defined below); (b) provide the Tools in accordance with laws applicable to Upstik’s provision of the Tools to its customers generally (i.e., without regard for your particular use of the Tools), subject to your use of the Tools in accordance with this Agreement and the applicable Documentation; (c); if applicable, use commercially reasonable efforts to provide you with applicable support for the Services. “Documentation” means any usage guides, policies, and other documents provided by Upstik relating to or for the Tools, the current version of which is available at <https://upstik.com/customize/addApp>.

- 1.3 Customer Responsibilities. You will: (a) be solely responsible for all use of the Tools and Documentation under your account and any software application or service that you make available to any individual (“End User”) that enables such End User to interface with the Tools (“Customer Application”); (b) not transfer, resell, lease, license, or otherwise make available the Tools to third parties (except to make the Tools available to your End Users in connection with the use of each Customer Application as permitted herein) or offer them on a standalone basis; (c) use the Tools only in accordance with this Agreement, the applicable Documentation, and applicable law or regulation; (d) be solely responsible for all acts, omissions, and activities of your End Users, including their compliance with this Agreement, the applicable Documentation, and applicable law or regulation; (e) use commercially reasonable efforts to prevent unauthorized access to or use of the Tools and notify Upstik promptly of any such unauthorized access or use; (f) provide reasonable cooperation regarding information requests from law enforcement, regulators, or telecommunications providers; and (g) comply with your representations and warranties set forth in Section 4 (Representations, Warranties, and Disclaimer).
- 1.4 Suspension of Account. Upstik may suspend your account, including access to any and all Tools if deemed appropriate, upon written notice to you, with or without cause if Upstik determines, in its sole and absolute discretion: (a) that you or your End Users materially breach (or Upstik, in good faith, believes that you or your End Users have materially breached) any provision of this Agreement, including their obligations under the Documentation; (b) there is an unusual and material spike or increase in your use of the Tools and that such traffic or use raises concerns of fraudulent activity or such use materially and/or negatively impacts the operating capability of the Tools; (c) that its provision of the Tools is prohibited by any applicable law or regulation; (d) that there is any use of the Tools by you or your End Users that threatens the security, integrity, or availability of the Tools; or (e) that Upstik believes that information in your account is untrue, inaccurate, or incomplete. You remain responsible for the Fees (as defined in Section 2.3 (Payment Terms)).
- 1.5 Changes to the Services. You acknowledge that the features and functions of the Tools may change over time. It is your responsibility to ensure each Customer Application is compatible with the Tools. Although Upstik endeavors to avoid changes to the Upstik tools that reduce compatibility with external systems, if any such changes become necessary, Upstik will use commercially reasonable efforts to notify you prior to implementation. In the event Upstik makes a non compatible change to a Upstik API and such change materially and negatively impacts your use of the Services, you will notify Upstik of the such impact, and Upstik may, in its sole discretion, agree to work with you to resolve or otherwise address such impact, except where Upstik, in its sole discretion, has determined that a particular change is required for security reasons, by telecommunications providers, or to comply with applicable law or regulation.

2 Fees and Payment Terms

- 2.1 Fees. Each Plan offers different pricing and feature options. Once you select your Plan, if you exceed your Plan usage limits, you will incur additional charges for the prior billing cycle based on your current Plan, which will be detailed on your bill and in your account. You have the option to upgrade to a higher tier at any time. If you upgrade during a billing cycle, you may elect to upgrade your package, your audience limit, or both. If you elect to upgrade both, the upgrade amount for the package upgrade is calculated first, and the upgrade amount for the audience limit upgrade is calculated second. You will also have the option to downgrade to a lower tier at any time, but if you

elect to downgrade during a billing cycle, your downgrade will not be effective until the end of that billing cycle, and you will still be charged for that entire billing cycle at the higher tier (including any applicable additional charges for the higher tier). When you sign up for a Plan, you agree to monthly recurring billing, starting on the date you sign up. Billing occurs on the same day each month, based on the date that you first started paying for any recurring monthly plan. Payments are due for any month on the same or closest date to the day you made your first monthly payment (the “Pay Date”). If any part of a month is included in the Term, then payment is required for the full month. If you exceed your self-selected usage limits for your Plan, then you’ll have to pay additional charges (as described above) for the prior billing cycle on or before the next Pay Date, even if the Term ends or you downgrade to a lower-priced Plan before that payment is otherwise due.

2.2 Taxes and Communications Surcharges.

2.2.1 Taxes. All fees are exclusive of any applicable taxes, levies, duties, or other similar exactions imposed by a legal, governmental, or regulatory authority in any applicable jurisdiction, including, without limitation, sales, use, value-added, consumption, communications, or withholding taxes (collectively, “*Taxes*”). You will pay all Taxes associated with this Agreement and your use of the Tools, excluding any taxes based on Upstik’s net income, property, or employees. If you are required by applicable law to withhold any Taxes from payments owed to Upstik, you will reduce or eliminate such withheld Taxes upon receipt of the appropriate tax certificate or document provided by Upstik. You will provide Upstik with proof of payment of any withheld Taxes to the appropriate authority. Taxes will be shown as a separate line item on an invoice.

2.2.2 Communications Charges. All fees are exclusive of any applicable communications service or telecommunication provider (e.g., carrier) fees or surcharges (collectively, “*Communications Surcharges*”), you will pay all Communications Surcharges associated with your use of the Services. You will pay all costs, fines, or penalties that are imposed on Upstik by a government or regulatory body or a telecommunications provider as a result of your or your End Users’ use of the Services.

2.3 Payment Terms. Except as otherwise expressly set forth herein, payment obligations are non-cancelable and fees, Taxes, and Communications Surcharges (collectively, “*Fees*”), once paid, are non-refundable. You will pay the Fees due hereunder in accordance with the following applicable payment method:

2.3.1 Credit Card. You are responsible for all Fees due. If your account does not have sufficient funds or your credit card declines a charge for the Fees due, Upstik may suspend the provision of the Services to all of your accounts until the Fees due are paid in full. You are prohibited from creating new accounts until the Fees due are paid in full. As long as you’re a Member with an active monthly Plan or are otherwise utilizing Tools or have an outstanding balance with us, you’ll provide us with valid debit or credit card (“card”) information and authorize us to deduct your charges against that card. You’ll replace the information for any card that expires with information for a valid one. If your card is automatically replaced with a new card by a payment processor, you acknowledge and agree that we’re authorized to deduct any charges on your account against the new card. Anyone using a card represents and warrants that they are authorized to use that card, and that any and all charges may be billed to that card and won’t be rejected. If we’re unable to process your card order for any reason, we’ll try to contact you by email and may suspend your account until your payment can be processed.

2.3.2 Invoicing. If you elect to receive invoices and Upstik approves you for the same, then (x) invoices will be sent to you each month, via email to the email address(es) you designate in your account and (y) you will pay the Fees due within thirty (30) days of the date of the invoice. The Fees are payable in United States dollars, or in any other currency or payment method that Upstik agrees, in its sole and absolute discretion, to accept. If you fail to pay the Fees and remedy such failure within fifteen (15) days of the date Upstik provides you with written notice of the same, then Upstik may (a) assess and you will pay a late fee of the lesser of 1.5% per month or the maximum amount allowable by law and (b) suspend the provision of the Services to all of your accounts until the Fees due are paid in full. You are prohibited from creating new accounts until the Fees due are paid in full.

3 Ownership, Customer Data, and Confidentiality

3.1 Ownership Rights. You agree that Upstik exclusively owns and reserves (and that you shall neither make nor have any claim with respect to) all right, title, and interest in and to the Tools, the Documentation, Service Usage Data, and any feedback or suggestions you or your End Users provide regarding the Services. “*Service Usage Data*” means any data that is derived from the use of the Services that does not directly or indirectly identify you, your End Users, or any natural person and includes (a) data such as volumes, frequencies, bounce rates, and Service performance data and (b) subject to any restrictions under applicable law or regulation, data that is anonymized, de-identified, and/or aggregated such that it could no longer directly or indirectly identify you, your End Users, or any natural person. Notwithstanding the foregoing, Upstik does not claim ownership of your Customer Applications or of your Confidential Information, subject to Upstik’s rights to process and distribute Customer Data in accordance with this Agreement.

You understand and acknowledge that Upstik reserves the right to share Customer Data with other Business partners, affiliates of Upstik.com, please refer to privacy for safely use of data to better assist you and likely businesses.

3.2 Customer Data. You grant Upstik and its Affiliates the right to process Customer Data as necessary to provide the Services in a manner that is consistent with this Agreement, the Upstik Data Protection Addendum, and the Upstik Privacy Notice. “*Customer Data*” means data and other information made available by or for you, to Upstik, through the use of the Services under this Agreement. You are responsible for the quality and integrity of Customer Data. You acknowledge that Upstik bears no obligation to preserve or maintain records of Customer Data, and that you are not entitled to any remedy from Upstik if your Customer Data becomes unavailable to you due to reasons including but not limited to accidental deletion or hacking.

3.3 Confidentiality

3.3.1 Definition. “*Confidential Information*” means any information or data, regardless of whether it is in tangible form, disclosed by either party (“*Disclosing Party*”) to the other party (“*Receiving Party*”) that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including, without limitation, this Agreement, Customer Data, security reports and attestations, audit reports, customer lists, pricing, concepts, processes, plans, designs and other strategies, “know how”, financial, and other business and/or technical information and materials of Disclosing Party and its Affiliates. Confidential Information does not include any information which: (a) is publicly available through no breach of this Agreement or fault of Receiving Party; (b) was properly known by Receiving Party, and to its knowledge, without any restriction, prior to disclosure by Disclosing Party; (c) was properly disclosed to Receiving

Party, and to its knowledge, without any restriction, by another person without violation of Disclosing Party's rights; or (d) is independently developed by Receiving Party without use of or reference to the Confidential Information of Disclosing Party.

- 3.3.2 Use and Disclosure. Except as otherwise authorized by Disclosing Party in writing, Receiving Party will not (a) use any Confidential Information of Disclosing Party for any purpose outside of exercising Receiving Party's rights or fulfilling its obligations under this Agreement and (b) disclose or make Confidential Information of Disclosing Party available to any party, except to Receiving Party's Affiliates, and Receiving Party's and its Affiliates' respective employees, legal counsel, accountants, contractors, and in Upstik's case, subcontractors (collectively, "*Representatives*") who have a "need to know" as necessary for Receiving Party to exercise its rights or fulfill its obligations under this Agreement. Receiving Party will be responsible for its Representatives' compliance with this Section 3.3. Representatives will be legally bound to protect Confidential Information of Disclosing Party under terms of confidentiality that are at least as protective as the terms of this Section 3.3. Receiving Party will protect the confidentiality of Confidential Information of Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own confidential information but in no event less than reasonable care. Notwithstanding the foregoing, you may disclose Upstik's SOC2 or similar report, which will constitute Upstik's Confidential Information, only to your End Users or your End Users' employee or contract worker who has a "need to know" for such SOC2 or similar report and is legally bound to terms of confidentiality that are at least as protective as the terms of this Section 3.3.
- 3.3.3 Compelled Disclosure. Receiving Party may disclose Confidential Information of Disclosing Party if so required pursuant to a regulation, law, subpoena, or court order (collectively, "*Compelled Disclosures*"), provided Receiving Party gives Disclosing Party written notice of a Compelled Disclosure (to the extent legally permitted). Receiving Party will provide reasonable cooperation to Disclosing Party in connection with a Compelled Disclosure at Disclosing Party's sole expense.
- 3.3.4 Injunctive Relief. The parties expressly acknowledge and agree that no adequate remedy may exist at law for an actual or threatened breach of this Section 3.3 and that, in the event of an actual or threatened breach of the provisions of this Section 3.3, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it.
- 3.3.5 Use of Marks. You grant Upstik the right to use your name, logo, and a description of your use case(s) on Upstik.com and in marketing and promotional materials, subject to your standard trademark usage guidelines that you expressly provide to Upstik.

4 Representations, Warranties, and Disclaimer

- 4.1 Power and Authority Representation. Each party represents and warrants that it has validly accepted or entered into this Agreement and has the legal power to do so.
- 4.2 Consents and Permissions. You represent and warrant that you have provided and will continue to provide adequate notices, and that you have obtained and will continue to obtain the necessary permissions and consents, to provide Customer Data to Upstik for processing pursuant to Section 3.2 (Customer Data).
- 4.3 Tools. Upstik represents and warrants that the Tools perform materially in accordance with the applicable Documentation. Your exclusive remedy for a breach of this Section 4.3 will be, at Upstik's option, to (a) remediate any material non-conformity or (b) refund you the Fees paid for

the time period during which the affected Tools do not comply with this Section. – text messaging is not refundable at all

4.4 **DISCLAIMER.** WITHOUT LIMITING A PARTY’S EXPRESS WARRANTIES AND OBLIGATIONS HEREUNDER, AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE TOOLS ARE PROVIDED “AS IS,” AND 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 FULLEST EXTENT PERMITTED BY LAW. UPSTIK ADDITIONALLY DISCLAIMS ALL WARRANTIES RELATED TO TELECOMMUNICATIONS PROVIDERS. YOU ACKNOWLEDGE THE INTERNET AND TELECOMMUNICATIONS PROVIDERS’ NETWORKS ARE INHERENTLY INSECURE AND THAT UPSTIK WILL HAVE NO LIABILITY FOR ANY CHANGES TO, INTERCEPTION OF, OR LOSS OF CUSTOMER DATA WHILE IN TRANSIT VIA THE INTERNET OR A TELECOMMUNICATIONS PROVIDER’S NETWORK. YOU ACKNOWLEDGE THAT UPSTIK DISCLAIMS ALL WARRANTIES WITH REGARD TO PROTECTING, PRESERVING, OR OTHERWISE MAINTAINING CUSTOMER ACCOUNTS OR DATA FROM ACTIONS OF PARTIES OTHER THAN UPSTIK AND ITS AFFILIATES, INCLUDING BUT NOT LIMITED TO: ACCESSING COMPUTERS, ACCOUNTS OR NETWORKS ILLEGALLY OR WITHOUT AUTHORIZATION, PENETRATING OR ATTEMPTING TO PENETRATE SECURITY MEASURES, PORT SCANS, STEALTH SCANS, AND OTHER ACTIVITIES DESIGNED TO ASSIST IN HACKING (COLLECTIVELY, “HACKING”). BETA OFFERINGS OF CERTAIN TOOLS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH NO WARRANTIES AND UPSTIK WILL HAVE NO LIABILITY AND NO OBLIGATION TO INDEMNIFY FOR ANY BETA OFFERING WHATSOEVER.

5 Indemnity

5.1 You agree to indemnify and hold Upstik harmless from any losses, damages, judgments, fines, and costs, including legal fees and expenses in connection with any claims you make that aren’t allowed under these Terms. (Indemnity is an agreement to compensate someone for a loss.) You also agree to indemnify and hold Upstik harmless from any losses, damages, judgments, fines, and costs, including legal fees and expenses, in connection with any claims arising out of or relating to (i) your content, Campaigns, or Sites, (ii) your use of the Tools, (iii) your violation of any laws or regulations, (iv) third-party claims that you or someone using your password did something that, if true, would violate any terms of the Agreement, (v) any misrepresentations made by you, or (vi) a breach of any representations or warranties you’ve made to us.

6 Limitation of Liability

6.1 **LIMITATION ON INDIRECT, CONSEQUENTIAL, AND RELATED DAMAGES.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, LOST DATA, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY’S OR ITS AFFILIATES’ REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

6.2 LIMITATION OF LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNTS PAID OR PAYABLE BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

6.3 EXCEPTIONS TO THE LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 6.1 (LIMITATION ON INDIRECT, CONSEQUENTIAL, AND RELATED DAMAGES) AND SECTION 6.2 (LIMITATION OF LIABILITY), THE LIMITATIONS IN SECTION 6.1 AND SECTION 6.2 DO NOT APPLY TO (a) YOUR BREACH OF SECTION 1.3 (CUSTOMER RESPONSIBILITIES); (b) YOUR AND YOUR AFFILIATES' BREACH OF SECTION 2 (FEES AND PAYMENT TERMS); OR (c) AMOUNTS PAYABLE PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 5 (INDEMNITY)

7 Term, Termination, and Survival

7.1 Agreement Term. This Agreement will commence on the Effective Date and continue until terminated in accordance with Section 7.2 (Termination) ("*Term*").

7.2 Termination

7.2.1 Either party may terminate this Agreement for convenience by providing the other party with at least thirty (30) days prior written notice. Notwithstanding the preceding sentence, if there are any active Plans on your account, this Agreement will not terminate until all such Plans have expired or have been terminated in accordance with the terms therein.

7.2.2 Material Breach. Either party may terminate this Agreement (including all Plans that are in effect) in the event the other party commits any material breach of this Agreement and fails to remedy such breach within fifteen (15) days of the date of written notice of such breach. For the avoidance of doubt, a breach of the Upstik.com Acceptable Use Policy will be considered a material breach of this Agreement. If Upstik terminates this Agreement because of your material breach, then Upstik will also close your accounts.

7.2.3 Insolvency. Subject to applicable law, either party may terminate this Agreement immediately by providing written notice in the event of the other party's liquidation, commencement of dissolution proceedings, or any other proceeding relating to a receivership, failure to continue business, assignment for the benefit of creditors, or becoming the subject of bankruptcy.

7.3 Survival. Upon termination of this Agreement, the terms of this Section 7.3 and the terms of the following Sections will survive: Section 2 (Fees and Payment Terms), Section 4 (Representations, Warranties, and Disclaimer) Section 5 (Indemnity), Section 6 (Limitation of Liability), Section 8 (General), and any applicable terms in Section 9 (Additional Terms).

8 General

8.1 Affiliates

8.1.1 Affiliates of Customer. Your Affiliates may use the Services under and in accordance with the terms of this Agreement. You represent and warrant that you have sufficient rights and the authority to make this Agreement binding upon each of your Affiliates. You and each of your Affiliates will

be jointly and severally liable for the acts and omissions of such Affiliate in connection with this Agreement and such Affiliate's use of the Services. Only you will bring any claim against Upstik on behalf of your Affiliates.

- 8.1.2 Affiliates of Upstik. An Affiliate of Upstik may provide the Services, or a portion thereof, to you or your Affiliates, as applicable, in accordance with this Agreement. Upstik will (a) be responsible for the Services its Affiliates provide and (b) not be relieved of its obligations under this Agreement if its Affiliates provide the Services or a portion thereof. Upstik will enforce the terms of this Agreement relating to the Services its Affiliates provide. Notwithstanding anything to the contrary in this Agreement, an Affiliate of Upstik may directly bill you or your Affiliates, as applicable, (x) for the Services it provides or (y) solely as a billing agent for Upstik or the Affiliate of Upstik providing the Services, as applicable.
- 8.2 Assignment. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either party may assign this Agreement, in whole or in part, without consent to (a) a successor to all or part of its assets or business or (b) an Affiliate. Any attempted assignment, delegation, or transfer by either party in violation hereof will be void. Subject to the foregoing, this Agreement will be binding on the parties and their respective successors and permitted assigns.
- 8.3 Relationship. Each party is an independent contractor in the performance of each and every part of this Agreement. Nothing in this Agreement is intended to create or will be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Each party will be solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith and for any and all claims, liabilities, damages, or debts of any type whatsoever that may arise on account of its activities, or those of its employees and agents, in the performance of this Agreement. Neither party has the authority to commit the other party in any way and will not attempt to do so or imply that it has the right to do so.
- 8.4 No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party (including your End Users or an Affiliate) unless it expressly states that it does.
- 8.5 Notices. Notices to Upstik will be provided via email to: *info@Upstik.com*. All notices to you will be provided via email to the relevant contact(s) you designate in your account.
- 8.6 Governing Law. The State of Delaware laws and the Federal Arbitration Act will govern all disputes arising out of or relating to the Service and the Agreement, regardless of conflict of laws rules.
- 8.7 Force Majeure. No failure, delay, or default in performance of any obligation of Upstik will constitute an event of default or breach of this Agreement to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control of Upstik, including but not limited to action or inaction of governmental, civil or military authority, hacking, ransomware, cyberwarfare, fire, strike, lockout, or other labor dispute, flood, terrorist act, war, riot, theft, earthquake, pandemic, epidemic or other natural disaster.
- 8.8 Waiver and Order of Precedence. No failure or delay by either party in exercising any right or enforcing any provision under this Agreement will constitute a waiver of that right or provision, or any other provision. Titles and headings of sections of this Agreement are for convenience only and will not affect the construction of any provision of this Agreement.

8.9 Severability. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be limited or eliminated to the minimum extent necessary to render such provision enforceable and, in any event, the remainder of this Agreement will continue in full force and effect.

8.10 Entire Agreement. This Agreement (including all exhibits and attachments hereto) will constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, proposals, statements, sales materials, presentations, or other agreements, whether oral or written. No oral or written information or advice given by Upstik, its agents, or its employees will create a warranty or in any way increase the scope of the warranties or obligations in this Agreement. The parties agree that any term or condition stated in your vendor registration form or registration portal or in any purchase order document or similar document will be construed solely as evidence of your internal business processes and the terms and conditions contained therein will be void and have no effect with regard to this Agreement, even if accepted by Upstik or signed by the parties after the Effective Date.

9 Additional Terms –

9.1 Private Beta Offerings. Any Private Beta Offerings made available to Customer are strictly for testing and experimentation purposes only. Customer acknowledges that, by their nature, Private Beta Offerings may (a) not meet speed or performance benchmarks or expectations; (b) have gaps in functionality; and (c) contain bugs. Private Beta Offerings, and any information related to such Private Beta Offerings, including their existence, are considered Upstik's Confidential Information.

9.2 United States Federal, State, and Tribal Governments. If, and only if, you are a (a) United States federal entity, including without limitation, a bureau, office, agency, department, or other entity of the United States government; (b) a United States state entity, including without limitation, a bureau, department, office, or other entity of a state or a local, county, borough, commonwealth city, municipality, town, township, special purpose district, or other entity established by the laws of a state and located in such state; or (c) a federally-recognized tribal entity performing governmental functions and eligible for funding and services from the United States Department of the Interior by virtue of its status as an Indian tribe, or in Alaska, a Native village or Alaska Regional Native corporation, the following terms apply:

9.2.1 Failure to Pay. Upstik may assess, and you will pay, interest equal to the maximum amount allowable by applicable law, if you fail to pay the Fees and remedy such failure within fifteen (15) days of the date Upstik provides you with written notice of the same.

9.2.2 Public Disclosure Laws. Section 3.3.2 (Use and Disclosure) of this Agreement does not prohibit you from disclosing the terms of this Agreement to the extent required by public disclosure laws applicable to you ("Public Disclosure Laws"), provided that, to the extent permissible, any material legal terms included in this Agreement (e.g., representations and warranties, indemnification, limitation of liability) and any trade secrets, non-publicly available pricing, future business plans, future product plans or features, or business strategies of Upstik are redacted.

9.2.3 Compelled Disclosure of Confidential Information. Receiving Party will provide reasonable cooperation to Disclosing Party in connection with a Compelled Disclosure at Disclosing Party's sole expense to the extent permitted by applicable law.

9.2.4 Customer Services IP Infringement. You represent and warrant that the Customer Applications do not, and will not, infringe or misappropriate a third party's intellectual property rights. Your breach

of this Section 9.2.4 will not be subject to liability limitations set forth in Section 6 (Limitation of Liability) of this Agreement.

- 9.2.5 Use of Marks. Upstik will not use your name, logo, or a description of your use case(s) on Upstik's website, earnings release and calls, or marketing or promotional materials without your prior written consent.
- 9.2.6 Indemnification by Customer. Your obligations in Section 6.2 (Indemnification by Customer) of this Agreement will apply to the extent permitted by applicable law, regulation, or procedure.
- 9.2.7 Assignment. The ability of either party to assign this Agreement without consent pursuant to Section 8.2 (Assignment) of this Agreement will not apply where prohibited by applicable law.
- 9.2.8 Governing Law. Section 8.6 (Governing Law) of this Agreement is hereby deleted in its entirety and replaced with the following:

Governing Law. This Agreement will be governed by and interpreted according to (a) United States Federal law, if you are a United States Federal entity, or (b) the laws of the state in which you are located without regard to conflicts of laws and principles that would cause the application of the laws of another jurisdiction, if you are not a United States Federal entity. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

- 9.2.9 Code of Federal Regulations. Upstik agrees to comply with the clauses included under 48 C.F.R. § 52.244-6 Subcontracts for Commercial Products and Commercial Services, and all applicable equal opportunity laws including the provisions of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 USC 4212), and Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations at 41 C.F.R. §§ 60-1 -60-60, 60-250, and 60-741. The affirmative action clause and regulations contained in the preceding sentence are incorporated by reference into this Agreement.
- 9.2.10 Commercial Items. The Services are "Commercially available off-the-shelf (COTS) items", consisting of "Commercial Products(s)," "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 2.101. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202 -1-227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being provided (a) only as Commercial Items and (b) with only those rights as are granted to all other Upstik customers. Unpublished-rights are reserved under the copyright laws of the United States.
- 9.2.11 Conflict. In the event of any conflict between this Section 9.2 and any other terms of this Agreement, this Section 9.2 will prevail.

10 Mandatory Arbitration

- 10.1 Mandatory Arbitration. Any dispute arising out of or relating to this Agreement, including its meaning or interpretation, shall be resolved solely by arbitration before an arbitrator selected in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted in California and adjudicated under Delaware law. The arbitrator(s) shall give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator(s). Judgment upon the arbitration award may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional

or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.