



UPLEVEL SOFTWARE AS A SERVICE AGREEMENT

This Uplevel Software as a Service Agreement constitutes an agreement (“**Agreement**”) by and between Uplevel, Inc., a Delaware corporation whose principal place of business is 300 Lenora Street, #952, Seattle, WA 98121-2411, (“**Uplevel**”) and the undersigned party (“**Customer**”) whose principal place of business is set forth in the Order(s). This Agreement is effective as of the date Customer signs the relevant Order, (the “**Effective Date**”)

1. SERVICE. Uplevel provides a cloud-based software as a service engineering productivity solution (the “**Uplevel Service(s)**”), and will provide Customer access to and use of Uplevel Service in accordance with the terms of this Agreement and any mutually agreed upon and executed order identifying the services to be made available by Uplevel pursuant to this Agreement and the fees associated with such services (an “**Order**”). In the event of any conflict between this Agreement and an Order, the terms of the Order will control solely to the extent of such conflict.

2. USE OF UPLEVEL SERVICE

2.1 Paid Services. If Customer has purchased a license to the Uplevel Services, the terms of this Section 2.1 will apply:

(a) Use. Subject to the terms and conditions of this Agreement, Uplevel hereby grants Customer during the Term (as defined below), a non-exclusive, non-transferable, worldwide, right to access and use the Uplevel Service for Customer’s internal business purposes. Customer may permit staff (i) for whom applicable fees have been paid, and (ii) who have either (x) been identified on an Order as a Manager, and/or (y) who have used the Uplevel Service’s insights and recommendations (each, a “**Manager**”) to access and use the Uplevel Service in accordance with the terms herein. Customer is responsible for all acts and omissions of its Managers.

(b) Training. Uplevel will provide training related to the use of the Uplevel Service to the extent set forth in an Order, to those individuals identified in the applicable Order. Additional training services are subject to Uplevel’s then-current fees. Customer is responsible for making a good-faith effort to attend all training sessions established by Uplevel.

(c) Email and Chat Support. Uplevel will, during the Term, provide email or chat support to Managers, Monday through Friday, **9:00am – 5:00pm PST**, U.S. holidays excluded. Uplevel will reply to all customer support requests within two business days.

2.2 Limitations. Customer shall not, directly or indirectly, (a) reverse engineer, disassemble, decompile, or otherwise attempt to discover the source code, object code, or underlying system architecture, structure, ideas, know-how, or algorithms relevant to the Uplevel Service or any software, documentation, or data related to the Uplevel Service; (b) modify, translate, or create derivative works based on the Uplevel Service or any software related to the Uplevel Service (except to the extent expressly permitted by Uplevel); (c) interfere in any manner with the operation of the Uplevel Service or the hardware and network used to operate the Uplevel Service; (d) remove any proprietary notices or labels from the Uplevel Service; (e) sublicense any of Customer’s rights under this Agreement, or otherwise use the Uplevel Service for the benefit of a third party or to operate a service bureau; or (f) use the Uplevel Service in a manner that violates applicable law (including, where applicable, data protection laws) or in a manner that has a material impact on the security of the Uplevel Service. Additionally, Customer shall not provide to Uplevel or use the Uplevel Services to process sensitive personal information (as defined under local law) .

2.3 Results Defined. “**Results**” are analytic reports, outcomes, predictions and other results generated from Customer’s use of Uplevel Services.



2.4 Restrictions on Results. Customer will not use the Results in any manner except as permitted herein. Without limiting the foregoing, Customer will not: (a) distribute the Results to third parties; (b) use the Results to develop a product or service competitive with the Uplevel Services; (c) reverse engineer, decompile, disassemble or attempt to discover the source code or other trade secrets of the Results; (d) modify, alter or create any derivative works of the Results; or (e) remove, alter or obscure any copyright, trademark or other proprietary rights notice on or in the Results.

2.5 No Competing Development. Customer will not use the Uplevel Services, Results, Confidential Information (as defined below) of Uplevel or any other information, know-how, trade secrets or other materials resulting from or learned through any use of the Uplevel Services or other exercise of Customer's rights under this Agreement to design, develop, implement or distribute any product, service, software, solution, or other technology, or permit any third parties to do so, whether acting on Customer's behalf or at Customer's direction, that are materially similar to or otherwise compete with the Uplevel Services.

3. OWNERSHIP

3.1 Uplevel Services. Subject to the limited rights expressly granted hereunder, Uplevel shall own and retain all right, title, and interest in and to (a) the Uplevel Service, all improvements, enhancements, or modifications thereto, (b) any software, applications, inventions, or other technology developed in connection with the Uplevel Service, and (c) all intellectual property rights related to any of the foregoing. Customer recognizes that the Uplevel Service and its components are protected by copyright and other laws. There are no implied licenses granted to Customer (by implication, estoppel or otherwise).

3.2 Customer Data and Results. As between Customer and Uplevel, Customer owns (i) all of Customer's and any of its subsidiaries', parent companies', affiliates', joint venturers', successors', transferees', and assigns' data that Customer provides to Uplevel through the Uplevel Services, and (ii) the Results that are generated therefrom.

3.3 "Derived Data and Results" shall mean Customer's data and results that have been de-identified in a manner that associations between such data to Customer, Customer personnel, and any of its subsidiaries, parent companies, affiliates, joint venturers, successors, transferees, and assigns have been removed and that Uplevel will implement reasonable measures designed to ensure that the information cannot be reidentified and contractually obligate any recipients of such Derived Data and Results to implement substantially similar measures designed to prohibit reidentification. Customer hereby grants to Uplevel an irrevocable, royalty-free, fully paid-up, worldwide, perpetual license to internally use, reproduce, modify, aggregate, publish, publicly display, and retain the Derived Data and Results, subject to this Section 3.3.

3.4 Data Deletion. Upon request of Customer, Uplevel will securely delete all Customer Confidential Information and Customer data that has been provided to or obtained by Uplevel in a manner that prevents any Customer Confidential Information or Customer data from being recovered; provided, however, that Uplevel is not required to delete Derived Data and Results which Uplevel may retain solely for the purposes described in this Agreement. Upon written request of Customer, Uplevel shall certify in writing that it has met its obligations under this Section.



4. FEES AND PAYMENT OF SERVICES

4.1 Fees and Payment. Customer shall pay Uplevel the fees set forth in the Order (“**Subscription Fees**”) within thirty (30) days of receipt of Uplevel’s invoice, unless otherwise agreed in writing. Any subscription fees paid by Customer are non-refundable. Billing will commence on the Order Date as set forth on the applicable Order. Upon any Order Renewal Term (as in the applicable Order), Uplevel may increase pricing for the Uplevel Services in such Order, provided that any such pricing increase shall not exceed ten percent (10%) over Customer’s pricing of the Uplevel Services in such Order in the immediately prior subscription term. Any amounts not paid when due shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less. Uplevel may suspend its performance hereunder 15 days after sending Customer written notice of payment delinquency and continue to suspend performance thereafter until all past-due amounts are paid in full. The fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Uplevel’s income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees and/or the provision of access to the Uplevel Service.

4.2 Expenses. Customer shall reimburse Uplevel for all additional expenses incurred outside of the fees specified above that are pre-approved by Customer, including Uplevel’s reasonable out-of-pocket (including travel and living) expenses incurred in performing its obligations hereunder.

5. CONFIDENTIALITY; DATA SECURITY; PRIVACY.

5.1 Confidential Information. During the course of Uplevel performing the Uplevel Services for Customer, each party may be given access to the other party’s Confidential Information. “**Confidential Information**” means information, whether oral, written, or observed, that (a) relates to a party’s or any of its subsidiaries, parent companies, affiliates, joint venturers, successors, transferees, and assigns past, present, or future research, development, business activities, products, services and technical knowledge, and (b) a party labels or indicates should be treated as confidential or which by its nature is reasonably understood to be confidential, in each case that is disclosed by one party (“**Discloser**”) to the other (“**Recipient**”). Recipient will: (i) protect Discloser’s Confidential Information in a reasonable and appropriate manner to the same extent it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event less than a reasonable manner; and (ii) use and reproduce Discloser’s Confidential Information only to perform its obligations and exercise its rights pursuant to this Agreement. Recipient may share Discloser’s Confidential Information with its employees, advisors, or consultants that assist Recipient in its performance of its obligations and the exercise of its rights hereunder and who are subject to written non-disclosure obligations no less restrictive than those set forth herein. The obligations set forth in this Section 5.1 will not apply to information that is: (w) publicly known; (x) already known to the Recipient at the time of disclosure; (y) disclosed to Recipient by a third party who is not under a confidentiality restriction with respect to such Confidential Information; or (z) independently developed by the Recipient. Disclosure of Confidential Information pursuant to applicable law, a subpoena or other validly issued administrative or judicial process will not be a breach of Recipient’s obligations, if, to the extent permitted by law, Recipient provides prior notice to Discloser of such disclosure, allows adequate time for Discloser to seek injunctive relief, acts in good faith to limit the disclosure of Confidential Information, and maintains the confidentiality of any Confidential Information beyond the required disclosure.

5.2 Data Security. Uplevel has established and implemented reasonable information security practices regarding the protection of Customer’s data, including administrative, technical, controlled access and physical security processes. Notwithstanding the foregoing, Customer is responsible for maintaining appropriate security, protection and backup of all information, content or data of Customer in Customer’s possession and implementing any requirements described in Uplevel’s documentation and made available to Customer for integrating with and using the Uplevel Service within Customers network or environment, including adequately safeguarding any login credentials Customer or its personnel may use to access the Uplevel Service and



Customer's data to prevent unauthorized access and use. Uplevel is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, or loss of, or damage to Customer data resulting from Customer's failure to adequately safeguard login credentials or in Customer's possession. For further information on Uplevel's data security practices, please see the Global Data Processing Agreement and the associated Information Security Safeguards both of which are located at the URL set forth in the Order.

5.3 Background Checks. Uplevel acknowledges that Uplevel's employees, contractors, or other workers who will have any access to Customer's data will have undergone a criminal background check demonstrating their trustworthiness to handle Confidential Information. All such background checks shall be completed in a manner consistent with applicable federal, state, and local law, and Uplevel shall be solely responsible for such compliance.

5.4 Data Privacy. With respect to the personal information processed and stored by the Uplevel Services, Uplevel will comply with requirements described in the Data Processing Agreement which is incorporated herein by reference.

6. TERM AND TERMINATION

6.1 Term. This Agreement commences on the Effective Date and shall remain in effect until six (6) months after the expiration or termination of the last outstanding or on-going Order(s), at which point, this Agreement will automatically terminate.

6.2 Termination for Breach. Either party may terminate this Agreement immediately upon written notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

6.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all rights and obligations of both parties, shall immediately terminate, excluding Uplevel's rights to use Derived Data and Results on an aggregated and anonymized basis under Section 3.2 and except as expressly set forth herein; (b) within thirty (30) days after the effective date of termination, Uplevel will destroy or return all Confidential Information of Customer and Customer, upon Uplevel's written request, will destroy or return all Confidential Information of Uplevel; (c) within thirty (30) days after the effective date of termination, Uplevel shall discontinue all use of Customer data and destroy all copies of Customer Data in its possession; and (d) customer will remit payment for any undisputed outstanding fees for Uplevel services performance prior to termination or expiration. Uplevel's rights to use **Derived Data and Results**, and the sections and subsections titled **Limitations, Ownership, Confidentiality; Data Security; Privacy, Effect of Termination, Disclaimers, Limitation of Liability, Indemnification, and Miscellaneous** will survive termination or expiration of this Agreement for any reason.

7. DISCLAIMERS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, UPLEVEL MAKES NO (AND HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. UPLEVEL DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE UPLEVEL SERVICE SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER – IN SUCH EVENT, SUCH EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS WILL APPLY TO THE MAXIMUM EXTENT ALLOWED BY LAW.

8. LIMITATION OF LIABILITY



8.1 Types of Damages. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH SUCH PARTY'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE UPLEVEL SERVICE OR OTHER PRODUCTS OR SERVICES HEREUNDER. FOR CLARIFICATION, ANY COST INCURRED BY A PARTY IN CONNECTION WITH ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 ARE DEEMED DIRECT DAMAGES AND ARE NOT THE DAMAGES DESCRIBED IN THE PRECEDING SENTENCE.

8.2 Amount of Damages. EXCEPT WITH RESPECT TO (A) BREACHES OF A PARTY'S CONFIDENTIALITY OBLIGATIONS AND (B) A PARTY'S INDEMNIFICATION OBLIGATIONS, THE MAXIMUM LIABILITY OF A PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO UPLEVEL DURING THE 12 MONTHS PRECEDING THE ACT, OMISSION, OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. WITH RESPECT TO BREACHES OF A PARTY'S CONFIDENTIALITY OBLIGATIONS, THE MAXIMUM LIABILITY OF A PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED \$1,000,000. WITH RESPECT TO A PARTY'S INDEMNIFICATIONS OBLIGATIONS, THE MAXIMUM LIABILITY OF A PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED \$200,000. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 8.2, THE PARTY'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE. FOR AVOIDANCE OF DOUBT, A PARTY'S LIABILITY LIMITS SET FORTH IN THIS SECTION 8.2 APPLY LIKEWISE TO THAT PARTY'S AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES.

9. INDEMNIFICATION

9.1 By Uplevel. Subject to the limitations set forth in Section 8, Uplevel will defend at its expense (including any and all claims, demands, damages, liabilities and costs) any suit brought against Customer, and will pay any settlement Uplevel makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Uplevel Service infringes, misappropriates or violates any intellectual property rights. If any portion of the Uplevel Service becomes, or in Uplevel's opinion is likely to become, the subject of a claim of infringement, Uplevel may, at Uplevel's option: (a) procure for Customer the right to continue using the Uplevel Service; (b) replace the Uplevel Service with non-infringing software or services which do not materially impair the functionality of the Uplevel Service; (c) modify the Uplevel Service so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Customer to Uplevel for the remainder of the Term then in effect, and upon such termination, Customer will immediately cease all use of the Uplevel Service. Notwithstanding the foregoing, Uplevel shall have no obligation under this section or otherwise with respect to any infringement claim (x) based upon any use of the Uplevel Service in combination with other products, equipment, software or data not supplied by Uplevel or approved in writing by Uplevel; (y) based upon any modification of the Uplevel Service by any person other than Uplevel or its authorized agents or approved by Uplevel in writing; or (z) to the extent such claim arises from Customer's use of the Uplevel Services in violation of this Agreement. This Section 9.1 states the sole and exclusive remedy of Customer and the entire liability of Uplevel, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions. Subject to the limitations set forth in Section 8, Uplevel agrees to indemnify, defend, and hold harmless Customer and its affiliates and their respective officers, directors, agents, and employees from and against any and all claims, demands, damages, liabilities and costs which directly or indirectly result from, or arise in connection with claims arising out of or relating to: (i) any material breach of any representation, warranty, covenant, or obligation by Uplevel set forth in this Agreement or violation of applicable law; or (ii) any grossly negligent act or omission of Uplevel, its agents, or employees, pertaining to its activities and obligations under this Agreement.



9.2 By Customer. Customer agrees to indemnify, defend, and hold harmless Uplevel and its officers, directors, agents, and employees from and against any and all third party claims, demands, damages, liabilities and costs, incurred by Uplevel which arise out of or relate to: (a) any material breach of any representation, warranty, or covenant by Customer set forth in this Agreement; or (b) any grossly negligent act or omission of Customer, its agents, or employees, pertaining to its activities and obligations under this Agreement.

9.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit, provided that the indemnifying party will not be excused from its indemnity obligations for failure to provide prompt notice except to the extent that the indemnifying party is prejudiced by that failure; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit (except that the indemnifying party shall not make any admissions on the indemnified party's behalf or settle any such claim without the indemnified party's approval unless the settlement unconditionally releases the indemnified party's of all liability and the indemnified party may participate in the defense of the claim at its sole cost and expense); and (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit at the indemnifying party's expense.

10. MISCELLANEOUS

10.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Washington, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Each party hereby expressly consents to the personal jurisdiction and venue in the state and federal courts located in Seattle, Washington, USA.

10.2 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Without limiting the generality of the foregoing, Customer agrees that the section titled **Limitation of Liability** will remain in effect notwithstanding the unenforceability of any other provision.

10.3 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.4 No Assignment. Neither party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement in connection with a change of control transaction whether by merger, acquisition, reorganization, sale of all or substantially all of its assets or shares of capital stock, or other operation of law, without the consent of the other party. The terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns.

10.5 Trademark License. Customer hereby grants Uplevel a nonexclusive, worldwide license to list Customer as a customer of Uplevel on Uplevel's website and to use, reproduce, distribute and display publicly Customer's trademarks, trade names, and logos solely in connection with such listing.

10.6 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible. If a party invokes this Section 10.6 more than twice in a six-month period or, in the case of Uplevel, suspends services for more than five days, the other party may terminate without penalty (and in the case of Customer, receive a pro-rata refund of any prepaid, unused funds).

10.7 Independent Contractors. Customer's relationship to Uplevel is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of Uplevel.



10.8 Notices. Any notice, invoice or other correspondence between the parties contemplated in this Agreement, in order to be valid, will be in writing or in written electronic format, and will be sent by U.S. Mail, electronic mail, telefax, personal service or express courier to the applicable Party, to the addresses set forth on the most recent Order. Such notices will be deemed delivered upon receipt.

10.9 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions and agreements (including the Software Evaluation License for Connector Hub, if applicable) between the parties with respect to such subject matters. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of Customer and the Uplevel.