

UPSTREAM TECH LENS™ TERMS OF SERVICE

These Upstream Tech Lens™ Terms of Service (the “Agreement”) are a legal agreement between Upstream PBC, doing business as Upstream Tech (“Upstream”), and you (“you” or “your”), and govern your access to and use of Upstream’s Lens™ software as a service services (collectively the “Lens Service”). If you are accessing or using the Lens Service on behalf of an entity or organization, then “you” or “your” refers to both you in your individual capacity, as well as your entity or organization.

THIS IS A LEGAL DOCUMENT BETWEEN YOU AND UPSTREAM. PLEASE READ IT. BY ACCESSING OR USING THE LENS SERVICE, YOU: (i) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS IN THIS AGREEMENT; AND (ii) EXPRESSLY AGREE TO THE TERMS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE LENS SERVICE.

If you agree to the terms of this Agreement, you have the following rights, obligations and responsibilities:

1. DEFINITIONS

- 1.1. “Authorized User” means one of the following, as indicated in the applicable Order Form: one individual; one company, corporation, utilities, not including subsidiaries, affiliates, or representative offices; one member of an Affiliation Group; one office or department of a civilian national agency/ministry at the cabinet level; one civilian national agency/ministry below the cabinet level; one office or department of a branch of a national military; one office or department of a national defense agency, national intelligence agency, or unified command; one federated state or provincial agency/ministry, county, or local government; one non-governmental organization or nonprofit organization within a single country; one educational organization within a country; one office or department within an international organization, institution, or agency, including the United Nations or European Union; or any one entity or equivalent to any of the entities listed above. For purposes of this definition, an “Affiliation Group” means members and chapters of affiliated non-governmental organizations that pay membership fees to you and receive services from you that are provided independent of the Lens Service.
- 1.2. “Confidential Information” means business, technical or financial information relating to the Disclosing Party’s business.
- 1.3. “Customer Data” means non-public data provided by you to Upstream to enable the provision of the Lens Service.
- 1.4. “Documentation” means the user manuals, documentation and other related materials, including without limitation, any training materials, regarding the proper access to and use of the Lens Service.
- 1.5. “Fees” means the fees described in the applicable Order Form or Scope of Work.
- 1.6. “Force Majeure Event(s)” means fire, earthquake, labor dispute, act of a public enemy, death, illness, or any other event beyond Upstream’s reasonable control.
- 1.7. “Lens Content” means any imagery, data, derived or value-added product, service, analysis, tool, or work licensed by Upstream to you under the terms of this Agreement, including, without limitation, information products and digital data sets.
- 1.8. “Malicious Software” means any virus, Trojan horse, worm, software lock, drop dead device, or any other limiting routine or harmful code.

- 1.9. “Order Form” means the order form or other ordering documentation (including any web page available via Upstream’s website) pursuant to which you: (i) indicate your acceptance of this Agreement; and (ii) purchase the right to access and use the Lens Service. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and an Order Form, the terms and conditions of the Order Form shall govern and control.
- 1.10. “Professional Services” means (i) all implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management related to your access to and use of the Lens Service, and (ii) reviews and assessments of the Lens Content.
- 1.11. “Scope of Work” means a statement of work or similar document specifying the Professional Services purchased by you from Upstream.
- 1.12. “Services” means the combination of either or both the Lens Service and the Professional Services.
- 1.13. “Subscription Effective Date” means the applicable date of the start of the Lens Service, as specified in the applicable Order Form.
- 1.14. “Subscription Term” means the period of time for which you have purchased the right to access and use the Lens Service, as specified in the applicable Order Form.
- 1.15. “Usage Rights” means the usage rights purchased by you or your entity or organization, as applicable, with respect to the access to and/or use of the Lens Service, as specified in the Order Form.

2. SERVICES

2.1. Lens Service:

- 2.1.1. Rights to Use: Subject to the terms and conditions of this Agreement, during the Subscription Term, Upstream hereby grants to you a personal, revocable, non-exclusive, non-transferrable, non-sublicensable right and license to: (i) access and use the Lens Service solely for your internal, non-commercial purposes in accessing the Lens Content; and (ii) use the Lens Content accessed via the Lens Service, for your internal, non-commercial purposes.
- 2.1.2. Restrictions and Limitations: The rights granted in Section 2.1 above are expressly conditioned on your compliance with the restrictions and limitations set forth herein. In particular:
 - 2.1.2.1. You may only access and use the Lens Service and the Lens Content within the scope of the rights you have purchased or have otherwise acquired from Upstream in the Order Form (the “Usage Rights”). It is your obligation to know and understand the scope and extent of your Usage Rights. If you exceed the scope of your Usage Rights and/or the license rights granted to you in this Agreement, you agree: (i) that Upstream may invoice you for the additional fees commensurate with any such unauthorized use; (ii) that you will pay such invoice within thirty (30) days of your receipt of the invoice; and (iii) that such remedy is not exclusive of the other remedies available to Upstream in connection with such unauthorized use.
 - 2.1.2.2. You acknowledge that, except as expressly stated in this Agreement, Upstream does not grant you any right or license to the Lens Service and/or the Lens Content, and no license or other rights shall be created by implication, estoppel or otherwise. Except as otherwise expressly authorized herein, you will not: (i)

sublicense or otherwise permit access to or use of the Lens Service and/or the Lens Content on a commercial time-sharing or service bureau basis; (ii) reassign or otherwise transfer your rights to access and use the Lens Service and/or the Lens Content; or (iii) make, or permit or allow a third party to make, any modifications, alterations or changes to the Lens Service and/or the Lens Content, or otherwise create any derivative works thereof. You will not use, reproduce, distribute, make available, or otherwise permit access to and/or use of the Lens Service and/or the Lens Content in any manner or for any purpose except as specifically permitted under this Agreement and/or in an Order Form.

- 2.1.2.3. You acknowledge and agree that Upstream may, during the Subscription Term, change, alter, or modify the Lens Service and/or the Lens Content, or any part thereof (“Modification(s)”). To the extent that any such Modifications materially reduce the then current features and/or functionalities of the Lens Service (and provided that such Modifications are not reasonably required for Upstream and/or the Lens Service to comply with applicable laws or to address any security vulnerabilities in or to the Lens Service) (a “Material Modification”), Upstream shall provide not less than thirty (30) days’ prior written notice of any such Material Modification. In the event you object to a Material Modification, then your sole and exclusive remedy shall be to terminate this Agreement by providing written notice to Upstream prior to the expiration of the foregoing thirty (30) day notice period. Such termination shall be without fault or penalty to either party, and Upstream shall have no obligation to refund or reimburse to you any amounts paid under this Agreement, provided that, Upstream shall refund to you any fees prepaid by you but unearned by Upstream as of the effective date of termination. Except as otherwise expressly set forth in this Section 2.1.2.3, Upstream shall have no liability of any kind to you with respect to any Modifications or any adverse effects resulting from any such Modifications.
- 2.1.2.4. Upstream may, at any time and without penalty, suspend and/or discontinue the Lens Service as is reasonably necessary in order for Upstream and/or the Lens Service to comply with applicable laws and/or to address an exigent circumstance such as a security breach or other unauthorized access to or use of the Lens Service (“Security Breach”). In the event of any suspension due to a Security Breach, Upstream shall use commercially reasonable efforts to restore the availability of the Lens Service as soon as reasonably practicable under the circumstances.
- 2.1.2.5. Upstream may, at any time and without penalty, suspend and/or discontinue certain Lens Content in the event that Upstream no longer has the right to make available such Lens Content via the Lens Service pursuant to Upstream’s agreements with its Third Party Content Providers.
- 2.1.2.6. You are not permitted to use the Lens Service in any manner that does or could potentially undermine the security of the Lens Service, or any associated IT systems or networks. In addition, you will not, and will not attempt to, interfere with, modify or disable any features, functionality or security controls of the Lens Service and/or the Lens Content, defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Lens Service and/or the Lens Content, or reverse engineer, decompile, disassemble or derive the source code, underlying ideas, algorithms, structure or organizational form from the Lens Service.
- 2.1.2.7. You will not, and will not authorize or permit any of your employees, agents or representatives, or any third party to: (i) upload, transmit, or otherwise publish any communication or content to or through the Lens Service that contains

Malicious Software; or (ii) use the Lens Service and/or any Lens Content in any manner that violates, infringes, or misappropriates the intellectual property rights, publicity or privacy rights, or other rights of any third party.

- 2.1.2.8. You will not, and will not authorize or permit any of your employees, agents, representatives, or any third party to: (i) access or use the Lens Service and/or the Lens Content for benchmarking or competitive use or analysis of the Lens Service; or (ii) access or use the Lens Service and/or the Lens Content in order to build any product or service that is competitive with the Lens Service and/or the Lens Content, or that copies or emulates any features, functions or graphics of the Lens Service and/or the Lens Content, in each case, without the express written permission of Upstream.
- 2.1.2.9. You will not, and will not authorize or permit any of your employees, agents, representatives, or any third party to: (i) use the Lens Service and/or the Lens Content for illegal, fraudulent, unethical or inappropriate purposes; (ii) transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (iii) interfere with another user's use and enjoyment of the Lens Service and/or the Lens Content; (iv) use the Lens Service in any manner that impairs the Lens Service, including without limitation the servers and networks on which the Lens Service is provided.
- 2.1.2.10. You will ensure that the only Authorized Users are permitted to access or use the Lens Service and/or the Lens Content. Authorized Users may be provided or be required to register for a user account in order to access and use the Lens Service ("User Account(s)"). You are fully responsible for all usage and activity on the Lens Service under such User Accounts and will be liable for all such use and activity. You are solely responsible for ensuring that your Authorized Users maintain the confidentiality and security of their respective user logins and password(s) (whether or not provided by Upstream, you, or chosen by the Authorized User), and you agree to immediately notify Upstream of any known or suspected unauthorized use(s) of any User Accounts, or any known or suspected breach of security, including loss, theft, or unauthorized disclosure of any login or password. Such user logins and passwords shall be the sole means by which you and/or your Authorized Users access the Lens Service and/or the Lens Content. You further agree to: (i) take reasonable efforts to resolve any unauthorized access to or use of the Lens Service and/or the Lens Content; and (ii) reasonably cooperate with Upstream in mitigating and/or resolving the unauthorized access or use. Except as otherwise set forth in this Agreement or as authorized in writing by Upstream, each User Account is assigned to an individual Authorized User and is personal to that Authorized User. Except as otherwise set forth in this Agreement or as authorized in writing by Upstream, you agree that under no circumstances will any Authorized User be permitted or allowed to use any User Account other than the User Account assigned to such Authorized User, nor will any such Authorized User permit or allow any third party, including any of your other employees, agents or representatives (as applicable), to use their assigned User Account.
- 2.1.2.11. The rights granted in this Section 2.1 include the right, during the Subscription Term, to make unlimited copies of the Lens Content, for your internal use only, with the proper copyright conspicuously displayed: "Includes material © [Year] Upstream Tech and [Third Party Content Provider]. All rights reserved."; and to further make the Lens Content available to your consultants and contractors working on your behalf and under your supervision, provided that, such consultants and contractors have no right to sublicense or otherwise transfer such Lens Content to a third party.

2.1.2.12. The Usage Rights granted to you may be limited to the use of the Lens Service and/or the Lens Content for evaluation use (“Evaluation Use”). With respect to such Evaluation Use, you acknowledge and agree that: (i) your use of the Lens Service and the Lens Content shall be limited to internal, non-commercial evaluation use only; (ii) Upstream does not provide any technical support or service levels in connection with such Evaluation Use; (iii) any risk associated with such Evaluation Use is solely with you; and (iv) such Evaluation Use shall be limited to the evaluation period authorized by Upstream, and Upstream reserves the right to terminate such Evaluation Use at any time upon written notice to you. IN NO EVENT SHALL UPSTREAM BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER IN CONNECTION WITH SUCH EVALUATION USE, WHETHER OR NOT SUCH DAMAGES ARE DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE. IF NOTWITHSTANDING THE PRECEDING SENTENCE, UPSTREAM IS LIABLE TO YOU IN CONNECTION WITH ANY SUCH EVALUATION USE, UPSTREAM’S TOTAL AGGREGATE LIABILITY TO YOU IN CONNECTION WITH SUCH EVALUATION USE SHALL NOT EXCEED \$100 USD.

2.2. Professional Services:

2.2.1. In order to purchase Professional Services from Upstream, you must enter into a Scope of Work with respect to such Professional Services. Each Scope of Work shall: (i) be in writing and signed by the parties; (ii) refer to the Order Form pursuant to which you purchased your Usage Rights; (iii) specify and further describe the Professional Services to be provided; and (iv) be subject to and governed by the terms and conditions of this Agreement, provided that, to the extent of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Scope of Work, the terms and conditions of the Scope of Work shall govern and control. Upstream will have no obligation to perform or provide any Professional Services unless and until a Scope of Work is entered into between the parties.

2.2.2. The Professional Services may include, as set forth in the applicable Scope of Work, reviews and assessments of the Lens Content (“Review and Reporting Services”), and the preparation and delivery of reports and analysis relating to such reviews and assessments (“Review and Reporting Deliverables”). Notwithstanding the terms and conditions of this Agreement and/or any Scope of Work, while reasonable care and diligence has been used in the performance of the Review and Reporting Services and the preparation and delivery of the Review and Reporting Deliverables, Upstream does not warrant or guarantee the correctness, accuracy, or timeliness of the Review and Reporting Services or the Review and Reporting Deliverables. The Review and Reporting Services and the Review and Reporting Deliverables are provided for general informational purposes only. The Review and Reporting Services and the Review and Reporting Deliverables are based solely on the Lens Content and Upstream does not perform any independent analysis or investigation of actual ground or site conditions of the location to which the imagery relates. Accordingly, any errors or inaccuracies in the imagery will result in errors or inaccuracies in the Review and Reporting Services and the Review and Reporting Deliverables. You are solely responsible for complying with applicable laws in connection with your use of the Review and Reporting Services and/or the Review and Reporting Deliverables.

3. THIRD PARTY SERVICES AND THIRD PARTY CONTENT

3.1. Third Party Services and Third Party Content Generally:

3.1.1. Upstream may use third party services, software or applications (“Third Party Services”) in making available the Lens Service and the Lens Content hereunder, and the Lens Service and the Lens Content may include, constitute, display or make available third party content, including data, information and/or materials (“Third Party Content”). You agree that:

3.1.1.1. Upstream engages the following specific Third Party Content providers to provide the Lens Content: (i) DigitalGlobe, Inc., an affiliate of Maxar Technologies; (ii) Airbus DS, an affiliate Airbus Group; (iii) Nearmap Limited; (iv) European Space Agency; and (v) U.S. federal civil agencies (the foregoing third parties and any other Third Party Content providers, “Third Party Content Providers”). You agree to comply with all requirements and restrictions of any Third Party Content Providers which you are informed of by Upstream, either prior to or following the Subscription Effective Date. As a convenience to you, certain Third Party Content Provider terms and conditions are specified at the following links:

Airbus End User License found at https://www.intelligence-airbusds.com/files/pmedia/public/r51461_9_standard-license-liv_inglibrary-210319.pdf

Maxar End User License found at <https://www.maxar.com/legal/internal-use-license>

European Space Agency (ESA) found at https://scihub.copernicus.eu/twiki/pub/SciHubWebPortal/TermsConditions/TC_Sentinel_Data_31072014.pdf

Third Party Content Providers and their terms and conditions may change from time to time during the Subscription Term.

3.1.1.2. You will comply with any and all third party license terms, terms of use, or terms of service applicable to any such Third Party Services or Third Party Content, and will not take or fail to take any act that would cause Upstream to be in breach or violation of any such third party license terms, terms of use, or terms of service. You further acknowledge and agree that Upstream will not be responsible for, and will have no liability to you in connection with, the unavailability, failure of, or your inability to use, any such Third Party Services or Third Party Content.

3.1.1.3. You acknowledge and agree that Upstream will not be responsible for any Third Party Content, including its accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Upstream does not assume and will not have any liability or responsibility to you for any Third Party Content.

3.1.2. You acknowledge and agree that Upstream’s: (i) using any Third Party Services; or (ii) providing any Third Party Content, does not constitute or imply an endorsement by Upstream of the Third Party Services or the Third Party Content, or their respective providers. The providers of any Third Party Services or Third Party Content, including any Third Party Content Providers, are intended third party beneficiaries of this Agreement having the right, but not the obligation, to enforce this Agreement in accordance with its terms.

3.2. Salo Sciences Content: Upstream has entered into a contractual relationship with Salo Sciences, Inc. (“Salo Sciences”) in which certain Salo Sciences content (“Salo Sciences Content”) may be accessed and used by end users by and through the Lens Service. Accordingly, if you have

purchased the right to access and use Salo Sciences Content in an Order Form, Salo Sciences shall be deemed a Third Party Content Provider hereunder, and the Salo Sciences Content will be deemed Third Party Content. If you have purchased the right to access and use Salo Sciences Content, you further acknowledge and agree to be bound by and comply with the terms and conditions of the Salo Sciences Carbon End User License Agreement found: <https://saloi.ai/carbon-eula> (the “Salo Carbon EULA”). You further acknowledge and agree that: (a) a breach by Customer of the Salo Carbon EULA shall be deemed a breach of this EULA by Customer; and (b) the Salo Carbon EULA is solely between Salo Sciences and Customer and any dispute between Salo and Customer is solely between Salo and Customer and does not involve Company; in the event of any breach by Salo Sciences of the Salo Carbon EULA or any other failure on the part of Salo Sciences to perform its obligations and responsibilities thereunder: (a) such breach or failure shall not be deemed a breach by Company of this EULA; and (b) Customer will not assert any claim or cause of action against Company and will instead assert any such claim or cause of action solely against Salo Sciences.

4. OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

- 4.1. Your Obligations and Responsibilities: You have the following obligations and responsibilities under this Agreement:
 - 4.1.1. You will be responsible for paying your own costs and expenses and for securing all licenses or certificates necessary for you to exercise your rights and/or perform your obligations and responsibilities under this Agreement. Upstream shall have neither responsibility nor liability to pay or compensate any employee, agent, or independent contractor employed by or otherwise associated with you.
 - 4.1.2. The Services do not replace the need for you to maintain regular data backups or redundant data archives. While the Lens Service may backup or create redundant data archives as part of its normal operations, the Lens Service is not a data hosting service. Accordingly, while Upstream will backup certain Customer Data as part of the Lens Service’s normal operations and pursuant to Upstream’s general data archival policies, you will be responsible for any data backups and/or redundant data archives of the Customer Data. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4.1.2, UPSTREAM HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF ANY CUSTOMER DATA.
 - 4.1.3. You will be responsible for the acts and/or omissions of your Authorized Users hereunder. You acknowledge and agree that any act or omission of an Authorized User that would be deemed a breach or violation of this Agreement if taken (or failed to be taken) by you hereunder shall be deemed a breach or violation of this Agreement by you.
 - 4.1.4. You agree to conduct your activities under this Agreement in strict compliance with all applicable laws. Without limiting the foregoing, you agree to comply with all United States export laws and applicable import laws of your locality (if you are not located in the United States), and you agree not to export the Lens Service or any component thereof without first obtaining all required authorizations or licenses. In particular, but without limitation, the Lens Service or any component part thereof may not be exported to re-exported into: (i) any U.S. embargoed countries; or (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By using the Lens Service, you represent and warrant that you are not located in any such country or on any such list.
 - 4.1.5. You will be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Lens Service and/or the Lens Content, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, “Equipment”). You will also

be responsible for maintaining the security of the Equipment, your account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of your account or the Equipment with or without your knowledge or consent.

- 4.2. Upstream Obligations and Responsibilities: Upstream shall have the following obligations and responsibilities under this Agreement:
- 4.2.1. Upstream will use commercially reasonable efforts to host, operate and maintain the Lens Service in accordance with the terms and conditions of this Agreement.
 - 4.2.2. Upstream will use commercially reasonable efforts to provide the Lens Service in material accordance with the Documentation. Notwithstanding the preceding sentence, you acknowledge and agree that:
 - 4.2.2.1. Upstream will not be responsible for and will have no liability to you in connection with any failure of the Lens Service to operate or perform in accordance with the Documentation due to deficiencies or failures of your IT systems or networks, or of any of your or a third party's hardware, software or technology.
 - 4.2.2.2. The proper operation of the Lens Service is dependent, in part, on the accuracy, quality and sufficiency of the Customer Data. You are solely responsible for, and Upstream will have no liability or responsibility of any kind in connection with, the accuracy, quality, legality and/or sufficiency of the Customer Data. You acknowledge and agree that any defects or inaccuracies in the Customer Data may delay, prevent, or otherwise detrimentally affect Upstream's provision of the Lens Service hereunder.

5. FEES AND PAYMENT

- 5.1. Fees: You will pay Upstream the Fees described in the applicable Order Form or Scope of Work for the Services in accordance with this Agreement and the terms of the applicable Order Form or Scope of Work. You may pay the Fees at the time of purchase via Upstream's website when this functionality is provided to you. Alternatively, Upstream may invoice you for the Fees, in which case, the Fees shall be due and payable within thirty (30) days of the date of the invoice. Except as otherwise set forth in this Agreement: (i) all Fees are based on subscriptions purchased and not actual usage; (ii) payment obligations are noncancellable and Fees paid are nonrefundable; and (iii) subscriptions for the Lens Service purchased cannot be decreased during the relevant Subscription Term. All amounts payable to Upstream under this Agreement shall be paid to Upstream in full and without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason. If you fail to make any payment when due then, in addition to all other remedies that may be available, Upstream may charge interest on the past due amount at the rate of one and a half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted pursuant to applicable laws.
- 5.2. Fees Increases: Upstream reserves the right to increase the Fees as part of the renewal of your subscription for the Lens Service. Upstream shall provide you written notice of any such Fee increase not less than forty-five (45) days' prior to such renewal(s). Upon the renewal of your subscription(s) for the Lens Service pursuant to Section 9.1.2 below, the increased Fees shall automatically apply.
- 5.3. Taxes: You will be responsible for paying all applicable transaction taxes relating to Upstream's provision of the Services and the Lens Content hereunder. The Fees set forth in the applicable Order Form or Scope of Work are exclusive of transaction taxes, including sales and use and value-added taxes.

6. CONFIDENTIALITY

- 6.1. Confidential Information: A party (the “Receiving Party”) may receive Confidential Information from the other party hereunder (the “Disclosing Party”). Upstream’s Confidential Information includes non-public information regarding the features, functionality and performance of the Services provided by Upstream. Your Confidential Information includes: (i) Customer Data; and (ii) the contents of any Review and Reporting Deliverables (as applicable). The Receiving Party will not disclose Confidential Information to any person or entity other than its officers, employees, contractors and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.
- 6.2. Exceptions: Notwithstanding anything to the contrary contained herein, the Disclosing Party’s Confidential Information will not include any information that the Receiving Party can demonstrate: (i) is or becomes generally available to the public (other than the through the breach or violation of this Section 6 by the Receiving Party); (ii) was in its possession or known by it prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to it without restriction by a third party; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party.
- 6.3. Non-Use and Non-Disclosure: With respect to Confidential Information of the Disclosing Party, the Receiving Party agrees to: (i) protect the confidentiality, and prevent the unauthorized use or disclosure, of such Confidential Information using the same degree of care it uses to protect its own proprietary and confidential information of like kind or nature, which will not be less than a reasonable degree of care; (ii) hold all such Confidential Information in strict confidence and not use, sell, copy, transfer reproduce, or divulge such Confidential Information to any third party; and (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, this Agreement.
- 6.4. Compelled Disclosure: Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall take reasonable efforts to: (i) assert the confidential nature of the Confidential Information to the agency; (ii) notify the Disclosing Party in writing of the agency’s order or request to disclose; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.
- 6.5. Remedies for Breach of Obligation of Confidentiality: The Receiving Party acknowledges that the breach its obligations of confidentiality and non-use set forth in this Section 6 may cause irreparable harm to the Disclosing Party for which the Disclosing Party may not be fully or adequately compensated by the recovery of monetary damages. Accordingly, in the event of any breach, or threatened breach, by the Receiving Party of its obligations under this Section 6, the Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.
- 6.6. Return of Confidential Information: Upon the expiration or termination of this Agreement, or at any time upon request of the Disclosing Party, the Receiving Party will promptly return all items and materials, including any copies, in its possession, custody, or control which contain any Confidential Information of the Disclosing Party. Notwithstanding this Section 6.6, Upstream may retain your Confidential Information that Upstream is required to retain pursuant to applicable laws or that is retained automatically as part of Upstream’s usual and customary computer backup procedures, record retention and data archiving schedules. The Receiving Party’s obligations of confidentiality and non-use set forth in this Section 6 will survive the expiration or termination of this Agreement for a period of two (2) years, provided that, for any portion of the Disclosing Party’s Confidential Information that constitutes a trade secret of the Disclosing Party, the Receiving Party’s obligations of confidentiality and non-use with respect to

such trade secret information shall continue for so long as such information qualifies as a trade secret.

7. DATA PRIVACY AND SECURITY

- 7.1. Data Security: Upstream shall implement and maintain appropriate administrative, physical and technical safeguards that reasonably prevent any unauthorized collection, use or disclosure of, or access to, Customer Data. Upstream shall notify you of any known or reasonably suspected breaches of, and/or unauthorized access to, the Customer Data (“Security Incident”), as soon as reasonably practicable, or as required by applicable laws, upon Upstream becoming aware of any such Security Incident.
- 7.2. Data Privacy: Customer Data may include personal data. By using the Lens Service, you consent to all actions that Upstream may take with respect to any such personal data in compliance with Upstream’s Privacy Notice.

8. PROPRIETARY RIGHTS

- 8.1. Your Proprietary Rights: You will own and retain all right, title and interest in and to: (i) the Customer Data; and (ii) any Review and Reporting Deliverables (excluding any Lens Content included in the Review and Reporting Deliverables, and any templates, forms, formatting, or other pre-existing work or content making up or included in the Review and Reporting Deliverables, all of which are and shall at all times remain the sole and exclusive property of Upstream and/or its licensors). Notwithstanding your ownership of the Customer Data, the use of the Lens Service may result in Upstream’s use and/or processing of Customer Data. Accordingly, subject to the terms and conditions set forth herein, you hereby grant to Upstream a limited, nonexclusive, royalty-free license to use and/or process the Customer Data for purposes of providing you the Lens Service hereunder.
- 8.2. Upstream Proprietary Rights:
 - 8.2.1. Upstream and/or its licensors (including Third Party Content Providers) shall own and retain all right, title and interest in and to: (i) data that is based on or derived from the Customer Data and provided to you as part of the Services; (ii) the Lens Service, and all improvements, enhancements or modifications thereto; (iii) the Lens Content; (iv) any software, applications, inventions or other technology developed in connection with Professional Services; and (v) all intellectual property rights related to any of the foregoing.
 - 8.2.2. Notwithstanding anything to the contrary, Upstream shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Upstream will be free to: (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Upstream offerings; and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.
- 8.3. Feedback: You hereby grant to Upstream a nonexclusive, perpetual, irrevocable, royalty-free, worldwide license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit your Feedback, without your permission and consent, and without any payment obligation of any kind. “Feedback” means any comments, feedback, suggestions, or ideas you or any of your Authorized Users provides to Upstream either through or independent of the Lens Service.

9. TERM AND TERMINATION

- 9.1. Term:

- 9.1.1. This Agreement shall commence as of the date you click to accept or otherwise indicate your acceptance of this Agreement and shall remain in effect until its termination as provided below. Each subscription for the Lens Service shall begin on the applicable Subscription Effective Date and will continue for the Subscription Term, in each case as specified in the applicable Order Form. The term of each Scope of Work shall be as specified in the applicable Scope of Work.
- 9.1.2. Upon the expiration of the initial Subscription Term (or any renewal Subscription Term thereafter), the Usage Rights specified in the Order Form shall immediately renew for an additional period of the same length of the initial or then current Subscription Term, unless either party provides written notice to the other of its intention that the Usage Rights not so renew at least thirty (30) days' prior to the expiration of the initial Subscription Term or the then current Subscription Term.
- 9.2. Termination: This Agreement may be terminated as follows:
 - 9.2.1. Upstream shall have the right to terminate this Agreement (or without terminating this Agreement, any individual subscriptions for the Lens Service) upon written notice to you, in the event you fail to make any past due payment owed by you to Upstream hereunder within fifteen (15) days of Upstream's written request therefor.
 - 9.2.2. In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice, if the other party materially breaches any of the terms or conditions of this Agreement and fails to cure such breach prior to the expiration of such thirty (30) day period.
 - 9.2.3. Upstream may terminate this Agreement at any time if no Order Form or Scope of Work is in effect by providing written notice of termination to you. Notice shall be delivered at least fifteen (15) days prior to the termination date contained in the notice, unless otherwise agreed in writing by the parties. You may terminate this Agreement at any time for convenience upon thirty (30) days' written notice to Upstream.
 - 9.2.4. Upstream may terminate this Agreement upon written notice to you in the event that Upstream determines, in its reasonable, good faith discretion, that you are in violation of, or are otherwise using the Services in any manner that violates, Upstream's Code of Ethics, available at <https://upstream.tech/ethics>.
- 9.3. Effect of Termination: Upon termination of this Agreement, each outstanding Order Form or Scope of Work, if any, shall terminate and you will immediately cease all use of, and all access to, the Lens Service and the Lens Content, and Upstream will have no further obligation to provide the Professional Services. If: (i) Upstream terminates this Agreement pursuant to Section 9.2.1, Section 9.2.2 or Section 9.2.4; or (ii) you terminate this Agreement pursuant to the last sentence of Section 9.2.3, all Fees that would have become payable had each outstanding Order Form or Scope of Work remained in effect until the expiration of its current term will become immediately due and payable. Upon any termination: (a) Upstream may, but is not obligated to, delete stored Customer Data; and (b) in the event you are current on all amounts owed by you to Upstream hereunder, Upstream shall deliver to you any Review and Reporting Deliverables, if any, in their then current form.
- 9.4. Survival: Sections 1, 5, 6, 7.2, 8, 9.3, 9.4, 10, 11, 12, 15, 16, and 17 shall survive any termination or expiration of this Agreement. All other rights and obligations shall be of no further force or effect.

10. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

- 10.1. Mutual Representations and Warranties: Each party represents and warrants that such party has the legal power to enter into this Agreement.

10.2. Your Representations and Warranties:

10.2.1. You represent and warrant that if you are accessing or using the Lens Service on behalf of an entity or organization, you have sufficient rights and authority to bind the entity or organization to the terms and conditions of this Agreement.

10.2.2. You represent and warrant to Upstream that: (i) you own or have a license to use and have obtained all consents and approvals necessary for the provision and use of all of the Customer Data that is placed on, transmitted via or recorded by the Lens Platform; (ii) the provision and use of the Customer Data as contemplated by this Agreement does not and will not violate privacy policy, terms-of-use or other agreement to which you are a party or any applicable laws to which you are subject; and (iii) except as expressly permitted in this Agreement or approved in writing by Upstream, no Customer Data will include social security numbers or other government-issued identification numbers, financial account numbers, credit card or debit card numbers, credit report information or other personal financial information, health or medical information or other information that is subject to international, federal, state, or local laws or ordinances now or hereafter enacted regarding data protection or privacy.

10.3. Disclaimer. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10 AND EXCEPT FOR ANY REPRESENTATIONS OR WARRANTIES THAT BY LAW CANNOT BE DISCLAIMED, THE SERVICES AND THE LENS CONTENT ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. UPSTREAM DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND IN CONNECTION WITH THE SERVICES, THE LENS CONTENT, AND/OR UPSTREAM'S PERFORMANCE UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, VALIDITY, AND/OR NON-INFRINGEMENT, OR ANY REPRESENTATIONS OR WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FOR PURPOSES OF CLARITY, UPSTREAM DOES NOT REPRESENT OR WARRANT THAT THE LENS SERVICE OR THE LENS CONTENT WILL PERFORM WITHOUT ERROR OR INTERRUPTION OR OTHERWISE MEET YOUR REQUIREMENTS.

11. INDEMNITY

11.1. By Upstream:

11.1.1. Upstream shall defend you from any claim by a third party that the Services infringe any United States patent or copyright or misappropriate any trade secret, and shall pay any settlement amounts and/or any resulting damages, costs and expenses finally awarded to a third party as a result of any such claim, provided that: (i) you promptly notify Upstream of any and such claims; (ii) Upstream is given the exclusive control of the defense and settlement (including all decisions relating to litigation, defense and appeal) of any such claim; and (iii) you give reasonable assistance to Upstream in its defense and settlement of the claim. The foregoing obligations do not apply: (a) with respect to portions or components of the Services: (1) not supplied by Upstream; (2) made in whole or in part in accordance with your written specifications or instructions; (3) that are modified by you after delivery by Upstream; or (4) combined with other products, processes or materials where the alleged infringement relates to such combination; or (b) where the claim is based on or arises out of: (1) your continuing the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (2) your use of the Services not strictly in accordance with this Agreement.

- 11.1.2. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Upstream to be infringing, Upstream may, at its option and expense: (i) replace or modify the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality; (ii) obtain a license for you to continue using the Services; or (iii) if neither of the foregoing is commercially practicable, terminate this Agreement and your rights hereunder and provide you a refund of any prepaid, unused Fees paid by you for the infringing Services.
- 11.1.3. THE FOREGOING STATES THE ENTIRE LIABILITY OF UPSTREAM WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SERVICES OR OTHERWISE, AND YOU HEREBY EXPRESSLY WAIVE ANY OTHER LIABILITIES OR OBLIGATIONS OF UPSTREAM WITH RESPECT THERETO. NO INDEMNITIES OF ANY KIND WHATSOEVER ARE MADE FOR YOUR BENEFIT FOR ANY PILOT OR EVALUATION USE.
- 11.2. By You: You agree to indemnify, defend and hold harmless Upstream for, from and against any and all damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action (actual or alleged) that arises from relates to: (i) your breach of this Agreement; or (ii) your unauthorized access to or use of the Lens Service or any Lens Content.

12. LIMITATION OF LIABILITY

- 12.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, UPSTREAM AND ITS SUPPLIERS AND LICENSORS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES WILL NOT BE HELD RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (i) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS, PROFITS OR REVENUE; (ii) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (iii) FOR ANY MATTER BEYOND UPSTREAM'S AND ITS SUPPLIERS' AND LICENSORS' REASONABLE CONTROL; OR (iv) FOR ANY AMOUNTS THAT, CUMULATIVELY AND IN THE AGGREGATE, EXCEED THE FEES PAID BY YOU TO UPSTREAM FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT UPSTREAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. PROMOTION

- 13.1. You agree that Upstream may identify you as a customer and use your names, logos and trademarks in Upstream's promotional materials for that purpose. You may request that Upstream stop doing so by submitting an email to lens@upstream.tech at any time. You acknowledge that it may take Upstream up to thirty (30) days to process such a request. Notwithstanding anything herein to the contrary, you acknowledge that Upstream may disclose the existence and terms and conditions of this Agreement to its advisors, actual and potential sources of financing and to third parties for purposes of due diligence.

14. ASSIGNMENT

- 14.1. Neither party may assign this Agreement to any third party without the prior written consent of the other; provided that no consent is required in connection with an assignment to an affiliate or in connection with any merger, reorganization, consolidation, sale of assets or similar transaction.

15. NOTICES & COMMUNICATIONS

- 15.1. Notices: All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 15.2. Upstream Contact: All notices or questions relating to invoices and payments should be directed by email to accounting@upstream.tech. All communications related to this Agreement that are not invoice or payment related should be directed by email to legal@upstream.tech. Written communications should be sent to:

Upstream Tech
Attn: Legal Department
2401 Monarch Street
Alameda, CA 94501

- 15.3. Your Contact: All notices or communications related to this Agreement will be directed to you using the address information Upstream currently has on file for you in your User Account.

16. GOVERNING LAW

- 16.1. This Agreement will be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. Any suit or proceeding arising out of or relating to this Agreement shall be commenced in a federal or state court in the County of San Francisco, and each party irrevocably submits to the jurisdiction and venue of such courts. If any claim or dispute arising out of, or relating to, this Agreement is not settled promptly in the ordinary course of business, the parties shall seek to resolve such dispute between them by first negotiating promptly in good faith. If the parties are unable to resolve the dispute within thirty (30) business days (or such period as the parties otherwise agree), then any such dispute shall be resolved by a binding arbitration conducted by a single arbitrator under the rules of the American Arbitration Association at a mutually agreed upon location. The arbitrator must base his or her decision upon this Agreement and applicable law. If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees, costs, and expenses.

17. GENERAL PROVISIONS

- 17.1. Entire Agreement: This Agreement, together with the applicable Order Form(s) or Scope(s) of Work entered into hereunder and all exhibits, annexes and addenda hereto and thereto is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications to this Agreement must be in a writing signed by both parties, except as otherwise provided herein.
- 17.2. Severability: If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 17.3. No Waiver: No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right,

power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this Agreement.

- 17.4. Force Majeure: Upstream will not be deemed in breach of this Agreement if Upstream is unable to complete or deliver the Services or any portion thereof by reason of a Force Majeure Event. Upon occurrence of any Force Majeure Event, Upstream shall give notice to you of its inability to perform or of any interruption in the Services and shall provide regular updates on when the Services can resume.
- 17.5. Independent Contractors: The parties to this Agreement are independent contractors only. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither party has authority of any kind to bind the other party in any respect whatsoever.
- 17.6. Reservation: Upstream reserves all remedies available at law or equity for any disputes that arise under this Agreement.