

## TERMS OF SERVICE FOR COWORKING OPERATORS

**Updated: February 2020**

**This Cloud Services Agreement** is entered into as of (the "Effective Date") between Upsuite Corp., a Delaware corporation, having its principal place of business at 1900 Dartmouth Ave., Boulder, CO 80305 ("Provider") and Company Name having a principal place of business at ("Operator").

### Introduction and Acceptance of Terms

Upsuite Corp. ("**Upsuite**") provides services to connect Upsuite members ("**Members**") with operators and their co-working spaces (the "**Services**") plus software and analytics to support these endeavors. Operator desires to register your co-working spaces, operated by an affiliate of Operator (a "**Facility**") on Upsuite's website located at [www.upsuite.com](http://www.upsuite.com) (the "**Website**") to be provided with the Services pursuant to these terms of service for operators (these "**Terms**"). By accessing and using the Website and registering for an operator account, Operator accepts these Terms and the [Privacy Policy](#), which shall apply to the Services Upsuite provides Operator and are subject to change with 30 days written notice. For the purposes hereof, the terms "Upsuite", "we," "us," and "our" mean Upsuite Corp., a company registered in the State of Delaware, United States, with a registered address at 1900 Dartmouth Avenue, Boulder CO 80305, the terms "you" and "your" refers to an operator to whom Upsuite provides services and "party," and "parties" refer to Upsuite and Operator, respectively individually and collectively.

### Registration

To use the Website and the Services, Operator must register and create an operator account. When Operator completes our registration form, you will be requested to provide your contact information and information about your Facility, and to complete all other information as may be required by the registration form. Such information may include your name (and/or the name of your company, address, phone number as well as register a valid credit card). Your account information must be accurate, complete and up-to-date at all times. Otherwise, your access to your account may be suspended or terminated automatically and without notice. Should you go two months without updating suite availability information, your account may be suspended.

By registering for an operator account, you appoint Upsuite as a connecting agent for Members with authority to identify, inform, process and connect Members for you in connection with your Facility.

As part of the Services, Upsuite may offer paid services to you and other operators outside of its free listing service. Upsuite reserves the right to promote operator facilities on third-party advertising platforms, using facility information consistent with the content on Upsuite's official website advertisement.

### Operator use of the Website and Operator Account

The Website, your operator account and Services are made available to you and provided exclusively for your personal use. You cannot use the Website in a manner that competes with Upsuite's activities.

### New Member Introductions

A successful introduction is made when Upsuite passes the contact information of a Member on to you for the Facility. This introduction is made by way of an email from Upsuite to you and the Member. When an Upsuite email introduction is not received by you or your Facility due to factors outside our reasonable control, such as spam or junk mail filtering, a successful introduction will be deemed to have been made, and you will owe Upsuite all fees outstanding for such introduction. Upsuite shall confirm that the lead was received by Company Name or its assignee via email within 48 business hours.

### New Member Rejection

Upsuite and the Members will assume that you and your Facility acknowledge and accept a new Upsuite member upon receipt of Upsuite's email introduction, unless you respond by email to the Upsuite email introduction within 48 hours, stating that you reject the Member introduction.

### New Member Confirmation

Within a reasonable time frame of your receipt of Upsuite's email introduction, you must make all reasonable efforts to enter into a written agreement with the Member, subject to your terms. It is your responsibility to provide Upsuite by email at [newmember@upsuite.com](mailto:newmember@upsuite.com) and provide the signed member agreement. Once verified, Upsuite will send you a confirmation e-mail detailing all the terms and conditions applicable to the Services as well as the applicable Referral Fees. You are also responsible for notifying Upsuite of any renewals or expansions that include fees under this agreement.

### Referral Fees

When you have provided Upsuite with the information as set forth in the "New Member Confirmation" section above, the referral fees (the "**Referral Fees**") owed by you to Upsuite for Upsuite's introduction to you of the new Member, plus all applicable taxes, become payable. Upsuite's Referral Fees are a portion of the total monthly rent paid by the Member to you for the first 12 months of the Member's use of your Facility or services. Here is a schedule of fees based on contract length, and facility occupancy at the time of lease signing:

<b>Term of Member Agreement</b>	<b>Referral Fee</b>
<b>Month to Month term</b>	10% billed monthly starting with new member confirmation
<b>6 Month term</b>	10% of 6 month lease billed upon new member confirmation
<b>12 month or greater term</b>	10% of 12 month lease billed upon new member confirmation

It is your sole responsibility to notify Upsuite of any agreement cancellations or non-renewals, within 15 days of notice being given to you. Without such notification, Upsuite will continue billing as if the member was still using the space.

If a Member signs up for a period of greater than 12 months, Upsuite is only entitled to agreement revenue up to 12 months. If a member signs an initial lease and then adds additional members or seats, Upsuite fees apply to the additional seats as well.

If a Member signs up for an initial period of more than 12 months, but which include a rent free period within the first year, Upsuite is entitled to Referral Fees calculated in accordance with the following structure: total monthly rent, multiplied by the total number of non-rent free months, divided by the number of months in the initial period, multiplied by 12, multiplied by the appropriate fee (in schedule above).

### **License Fee Increases**

Should the total monthly rent payable by the Member increase during the term of your agreement with the Member, it will be your responsibility and obligation to advise Upsuite by email within 48 hours of the total monthly rent increase. Should Upsuite raise fees on cloud services it will be upon renewal and Upsuite will advise of the increase prior to the renewal notice date. .

### **Payments**

**Payment Terms.** Operator will pay to Provider the Fees as further described in the Exhibits to this Agreement, as and when described in such Exhibits. Unless otherwise agreed in writing between the parties, all Fees are stated and all payments shall be made in US Dollars. Other than net income and gross receipt taxes imposed on Provider, Provider may charge and Operator will pay applicable United States, state or local sales or use taxes or value added taxes that Provider is legally obligated to collect from its customers ("Taxes"), provided that such Taxes are stated on the original invoice that Provider provides to Operator and Provider's invoices state such Taxes separately and meet the appropriate tax requirements for a valid tax invoice. Operator may provide Provider an exemption certificate acceptable to the relevant taxing authority, in which case, Provider shall not collect the Taxes covered by such certificate. Provider will be responsible for all other taxes (including interest and penalties) or fees arising from transactions and the documentation of transactions under this Agreement. Operator shall maintain the right to deduct or withhold any taxes from any amounts payable to Provider under this Agreement, and payment to Provider as reduced by such deductions or withholdings will constitute full payment and settlement to Provider of such amounts.

**Payments.** Subscription Fees will be billed and paid Net 30 days from the Date. The Provider will provide Operator with not less than 30 days' prior written notice of expiration of the then current term. Subscription Fees payable in respect of each renewal term will be paid annually. As between Provider and Operator, Provider shall maintain the same rates for Subscription Fees for the initial term as described in Exhibit A. Provider may increase the rates for Subscription Fees as described in Exhibit A following the initial term, subject to: (i) the increase not exceeding the increase in CPI + 2% over the one year period preceding the notice date for the increase, with the increase not to exceed 5% and (ii) Provider having provided Operator with not less than 30 days' prior written notice of the increase. Notwithstanding any provision of this Agreement to the contrary, in no event will any rates payable by Operator under this Agreement exceed Provider's then current applicable list prices for the Subscription Services.

**Audit Rights.** Provider shall have the right during the term of this Agreement (no more than once a year at its sole cost and expense), in a manner that does not interfere with Operator's normal operations and with thirty (30) prior notice, to audit Operator's Use of the Subscription Services to the

extent necessary to verify the Fees properly payable by the Operator hereunder, including the Use of the Subscription Services by the Operator and Operator Affiliates hereunder.

### **Penalty, Non-Circumvention**

If following your registration on the Website and use of the Services, you rent your Facility without advising us as required above, a penalty of 2x (twice) the normal fee will be charged to you directly and without notice.

### **Overtake Rule**

If Upsuite introduces a Member to you and your Facility, and a third party also refers you and your Facility to such Member, then the referrer who was first to send the introduction shall be credited with the Referral Fee.

### **Change of Ownership**

In the event that your Facility (or a portion of your Facility) is sold, assigned or transferred, it is your responsibility to immediately advise Upsuite of such sale, assignment or transfer in writing (email is sufficient) and to ensure that the purchaser, assignee or transferee is aware of, accepts and comply with the provisions contained herein, including the payment of the Referral Fees to Upsuite. Notwithstanding any such sale, assignment or transfer, you shall remain jointly and severally (*solidarily*) liable with the purchaser, assignee or transferee to Upsuite for the fulfillment of the obligations contained herein, including the payment of the Referral Fees to Upsuite, until the purchaser, assignee or transferee acknowledges and agrees in a written instrument to be bound by the Terms contained herein.

### **Confidentiality**

Each party (the "Disclosing Party" for the purposes of this Section) may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party" for the purposes of this Section) certain Confidential Information (as defined below). The Receiving Party shall hold in strict confidence the Confidential Information of the Disclosing Party using the same degree of care which the Receiving Party ordinarily uses with respect to its own Confidential Information, but in no event with less than reasonable care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing Party, bound in writing by confidentiality terms no less restrictive than those contained herein. For the purposes of this Section, "Confidential Information" means any non-public or proprietary information of the Disclosing Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including product information, Operator lists, know-how, program concepts, trade secrets and the terms of this Agreement. For greater certainty, the following shall be considered Provider's Confidential Information: (a) any information, in whatever form, disclosed by Provider that relates to the Subscription Services or Operator Software and is non-public; and (b) the Documentation. For greater certainty, the following shall be considered Operator's Confidential Information: (1) any information, in whatever form, disclosed by Operator, including Operator Data, Operator's configurations of the Subscription Services and Operator Software, information of or pertaining to any Operator customer and all Operator customer data, and information regarding Operator's or any Operator customer's services offerings, pre-release offerings, software, technology, technology implementation processes, marketing and

business plans and financial information, channel, customer and employee information, identifying information of individuals and other personal data, and authentication credentials provided to Contractor or its Personnel by Operator. Confidential Information may also include the information of a third party disclosed to the Disclosing Party under an obligation of confidentiality. Confidential Information, however, shall not include any information which the Receiving Party can establish: (i) with the exception of personal information, was in the public domain prior to the time of disclosure to the Receiving Party by the Disclosing Party; (ii) with the exception of personal information, becomes publicly known after disclosure to the Receiving Party through no action or inaction of the Receiving Party; (iii) is in the possession of the Receiving Party, without confidentiality restrictions, at the time of disclosure to the Receiving Party by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; or (iv) only to the extent required, is required to be disclosed pursuant to an order or requirement of a court, administrative agency, or other governmental body, provided, however, that the Receiving Party shall provide prompt notice of its obligation to so disclose to the Disclosing Party prior to disclosing the information and shall use its commercially reasonable efforts to obtain a protective order or otherwise prevent public disclosure of such information, at the Disclosing Party's expense.

Provider hereby acknowledges that Operator is subject to certain privacy and information security laws and regulations, pursuant to which Operator is required to ensure that it appropriately safeguards any personal information regarding Operator's (or its customers') former, current or prospective users or employees ("Personal Information"). To the extent that Provider receives any Personal Information or Operator Data as a result of any exchange of information under this Agreement, and notwithstanding anything to the contrary contained in this Agreement, Provider agrees that it will (a) not disclose or use any Personal Information except to the extent necessary to carry out its obligations under this Agreement and for no other purpose, (b) not disclose Personal Information to any third party, including, without limitation, its third party service providers without the prior written consent of Operator and subject to the further requirements of this Section, (c) employ commercially reasonable administrative, technical and physical safeguards designed to prevent unauthorized use or disclosure of Operator Data and Personal Information, including encryption of the foregoing, (d) promptly provide such information regarding its information security systems, policies and procedures as Operator may request relating to its due diligence and oversight obligations under applicable laws and regulations, (e) in the event of any actual or apparent theft, unauthorized use or disclosure of or access to any Personal Information or Operator Data, immediately commence all reasonable efforts to investigate and correct the causes and remediate the results thereof, and (f) promptly following discovery of any event described in clause (g) hereof, provide Operator notice thereof, and such further information and assistance as may be reasonably requested. Operator or its designee may annually, upon reasonable advance notice and during regular business hours, reasonably audit the operations and facilities of Provider to the extent necessary to ensure compliance with the requirements of this Section and any applicable laws pertaining to protection of Personal Information. Provider will cooperate with the auditing organization in all reasonable respects regarding any such audit. As an alternative to any such audit, if acceptable to Operator, Provider may provide Operator annually with an applicable independent third party audit report reasonably acceptable to Operator regarding such operations, facilities, and compliance.

## WARRANTIES

**Performance.** For the duration of the subscription Provider warrants that the Subscription Services, when Used as permitted under this Agreement and in accordance with the Documentation, will operate substantially as described in the Documentation. Provider does not warrant the Operator's Use of the Subscription Services will be completely error-free or uninterrupted. Provider will, at its own expense and as its sole obligation and Operator's exclusive remedy for any breach of this warranty, correct any reproducible error in the Subscription Service and/or Operator Software reported to

Provider by Operator in writing during the Subscription Period and, if Provider is unable to correct the error within 30 days' of notification thereof, Provider will refund to Operator all Subscription Fees that Operator pre-paid to Provider for the period following the date of reporting the error.

**Authority.** Provider represents and warrants that it has the full power and authority to grant the rights granted by it to the Operator under this Agreement.

**Professionalism.** Provider represents and warrants that Provider will perform the Subscription and Support Services (collectively, "Services") in a good, professional and workmanlike manner, consistent with industry standards, and that each of Provider's personnel assigned to perform Services has the skills, training and resources necessary to perform the Services assigned to them in compliance with this Agreement.

**Malware.** Provider represents and warrants that: Provider will use all commercially reasonable efforts, including use of then current versions of commercially available anti-virus software, to ensure that the Services, as delivered or modified by Provider, do not contain any Malware; and that Provider will not introduce or transmit any Malware into Operator's networks or devices. "Malware" means programming (code, scripts, active content, and other software) that is designed to disrupt or deny operation, gather information that leads to loss of privacy or exploitation, or gain unauthorized access to system resources, or that otherwise exhibits abusive behavior. Malware includes computer viruses, worms, trojan horses, spyware, dishonest adware, scareware, crimeware, most rootkits, or other malicious or unwanted software or programs.

**Compliance with Law.** Provider represents and warrants that Provider will perform the Services in compliance with all applicable federal, state, provincial and local laws, regulations, rules and ordinances (collectively, "Laws"), including those related to employment, and to export control Laws. Provider will defend, indemnify and hold Operator harmless from and against any loss, liability, damages or expense (including attorneys' and other experts' fees) incurred by Operator or its affiliates and arising out of any claim that Provider has failed to comply with any Laws.

## **DISCLAIMERS**

EXCEPT FOR THE EXPRESS WARRANTIES IN THIS DOCUMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. OPERATOR ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT. OPERATOR ACKNOWLEDGES THAT THE SUBSCRIPTION SERVICES ARE PROVIDED WITH THE UNDERSTANDING THAT PROVIDER IS NOT ENGAGED IN THE BUSINESS OF RENDERING LEGAL, TAX OR OTHER PROFESSIONAL SERVICES (EXCLUDING FOR THESE PURPOSES ANY SERVICES PROVIDED UNDER THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE PARTIES) AND THAT THE SUBSCRIPTION SERVICES ARE NOT INTENDED TO PROVIDE LEGAL, TAX, OR OTHER EXPERT ADVICE, OR BE A SUBSTITUTE FOR A LAWYER, ACCOUNTANT, OR OTHER PROFESSIONAL. IF LEGAL OR TAX ADVICE OR OTHER EXPERT ASSISTANCE IS NEEDED, THE SERVICES OF A COMPETENT LAWYER, ACCOUNTANT, OR OTHER PROFESSIONAL LICENSED TO PRACTICE IN THE APPLICABLE JURISDICTION SHOULD BE SOUGHT. WITHOUT PREJUDICE TO THE WARRANTIES IN THIS DOCUMENT, OPERATOR ACKNOWLEDGES AND AGREES THAT ALL DECISIONS MADE BY OPERATOR WITH THE ASSISTANCE OR USE OF THE SUBSCRIPTION SERVICES WILL BE EXCLUSIVELY THE RESPONSIBILITY OF THE OPERATOR.

## **INDEMNITY**

Intellectual Property Infringement. Provider agrees to defend, indemnify and hold harmless Operator against all liability and expenses (including reasonable attorneys' fees) suffered or incurred by the Operator arising from any claim by a third party that the Subscription Services or Operator Software infringe the intellectual property rights of such third party. Operator agrees to notify Provider promptly in writing of such a claim. Operator shall give Provider sole control of the defense of such a claim and any related settlement negotiations, provided that Provider may not agree to any settlement that imposes any obligation on Operator without Operator's prior written consent. Operator shall co-operate with such a claim and, at Provider's request and expense, assist in such defense. If the Subscription Services or Operator Software become, or in Provider's opinion is likely to become, the subject of an infringement claim, Provider may, at its option and expense, either: (a) procure for Operator the right to continue using the Subscription Services and Operator Software; (b) replace or modify the Subscription Services and Operator Software in a functionally equivalent manner so that it becomes non-infringing; or (c) accept termination of the Subscription Services and give Operator a refund for the Subscription Fee pre-paid by Operator for the period of time following such determination. Notwithstanding the foregoing, Provider will have no obligations under this Section or any other liability to Operator with respect to any infringement claim to the extent based upon: (i) any Use of the Subscription Services not in accordance with this Agreement; (ii) the combination of the Subscription Services with other products, software, or data not supplied by Provider, if the infringement would not have occurred but for such combination, unless such other products, software, or data are necessarily required to use the Subscription Services in their intended manner, and / or (iv) any modification of the Subscription Services or Operator Software by any person other than Provider or its authorized agents or subcontractors. THIS SECTION STATES PROVIDER'S ENTIRE LIABILITY AND OPERATOR'S SOLE AND EXCLUSIVE REMEDY FOR ANY INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT CLAIMS.

#### **LIMITATION ON LIABILITY**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT OR THE SUBSCRIPTION SERVICES AND OPERATOR SOFTWARE, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER LEGAL THEORY, EXCEED THE AMOUNT OF THE FEES PAID TO PROVIDER HEREUNDER AND OPERATOR ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT PROVIDER WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS ON LIABILITY CONTAINED IN THIS SECTION SHALL NOT APPLY IN RESPECT OF: (i) PROVIDER'S DEFENSE, INDEMNIFICATION AND HOLD HARMLESS OBLIGATIONS; (ii) EACH PARTY'S OBLIGATIONS UNDER THE CONFIDENTIALITY SECTION (SUBJECT TO LIMITS OF LIABILITY INSURANCE) AND WARRANTIES; NOR (iii) EACH PARTY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

#### **Content**

By registering for an operator account, you grant Upsuite a license to use, copy, make available, publish and display for the purpose of the Services any text, illustration, graphic, image, photograph and other content uploaded, deposited or published by you on the Website (the "**Content**").

Upsuite reserves the right to require that you upload, deposit or publish a minimum of or specific Content (and in a certain format, size and resolution) in connection with your Facility.

## **Independent Contractor**

The relationship between you and Upsuite is that of independent parties and under no circumstances shall a party, its agents or employees be deemed agents or representatives of the other party.

## **Entire Agreement**

These Terms constitute the entire agreement between you and Upsuite regarding your use of the Website, the Services and any other subject matter herein, and they replace any previous agreement, representation, warranty or understanding, whether verbal or written, express or implied, in this regard.

## **Governing Law**

These Terms are governed by and construed in accordance with the laws of the State of Colorado, and of the laws of the United States applicable therein without regard to its choice of law or conflicts of law principles. You agree that any dispute related to these Terms or the Services shall be submitted to an Colorado court of competent jurisdiction in the judicial district of Denver, State of Colorado, USA.

## **English Language**

Operator and Upsuite hereby agree that these Terms and all related documents, instruments and correspondence will be drafted in English only. *Il est de la volonté expresse de vous et Upsuite que ces Termes et l'ensemble de la documentation, des écrits et de la correspondance afférente soit rédigée en langue anglaise seulement.*

## **Term and Termination**

**Term.** The initial term of this Agreement will commence on the Effective Date and will continue for one year unless sooner terminated in accordance with this Agreement. The Term will automatically be extended by additional terms of one (1) year each unless either Party provides not less than thirty (30) days' prior written notice of its intent not to renew.

**Termination.** Each party may terminate this Agreement, effective immediately upon written notice to the other party, if: (a) the other party materially breaches any term of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party; or (b) the other party becomes insolvent, has a receiver appointed with respect to a material part of its assets, or is the subject of any bankruptcy proceeding that is not dismissed within thirty (30) days of its filing. Notwithstanding the foregoing: (a) Provider may terminate this Agreement, effective immediately upon written notice to Operator, if: Operator fails to pay any undisputed amount due to Provider under this Agreement within sixty (60) days after receiving written notice from Provider that payment is overdue.

**Effects of Termination.** Upon termination of this Agreement for any reason, any undisputed amounts owed to Provider under this Agreement before such termination will, if not subject to refund or credit rights under this Agreement, be due and payable upon the effective termination date, all access and license rights granted in this Agreement will cease thirty (30) after the effective termination date, and Operator must promptly discontinue all Use of the Subscription Service and Operator Software, erase all copies of the Operator Software from any Operator computers, and return to Provider or destroy all copies of the Operator Software and Documentation on tangible media in Operator's possession or



control and certify in writing to Provider that it has fully complied with these requirements within thirty (30) days after the effective termination date. Upon any termination or expiration of this Agreement, for any reason, Provider shall, upon request by Operator: (i) provide Operator with a complete and accurate copy of all Operator Data stored on the System, or the ability to export the same, in a format reasonably designated by Operator, and (ii) destroy all Operator Data in Provider's possession or under its control and provide Operator with a Certificate of Compliance.

**Survival.** Sections ("Restrictions on Use"), ("Proprietary Rights"), ("Ownership"), ("Confidentiality"), ("Warranties"), ("Indemnity"), ("Limitation Liability"), ("Effects of Termination"), and ("General") will survive the termination of this Agreement for any reason.

## **GENERAL**

**Compliance with Laws.** Operator will comply with all applicable laws, including all export and import control laws and regulations, in its Use of the Subscription Services and Operator Software.

**Assignment.** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other; provided, however, Operator may assign this Agreement to an Affiliate without Provider's prior written consent and Provider can assign this Agreement to a successor entity without Operator's prior written consent. Each Party agrees to provide prompt written notice to the other Party of any such assignment.

**Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by personal delivery, prepaid international air courier, or facsimile to the other party at the address (or fax number) set forth below. Such a notice, consent or approval will be effective upon receipt, if personally delivered, upon delivery, if sent by air courier, or one (1) business day following transmission, if sent by fax (provided a transmission confirmation is obtained). Either party may change its address or fax number by giving notice of the new address or fax number to the other party in accordance with this Section.

**Governing Law; Dispute Resolution.** This Agreement will be governed by the laws of the state of Delaware, USA without reference to conflicts of law principles.

**Remedies.** Each party shall be entitled to seek immediate and permanent injunctive relief in accordance with this document or in the event of any such breach or threatened breach by the other party pertaining to any intellectual property rights or Confidential Information of the other, to Operator Data, or to the Operator Software or Subscription Services, and each party acknowledges that any such breach may cause immediate irreparable harm for which money damages may not be an adequate remedy. Nothing herein shall limit either party's right to any remedies at law.

**Use of Aggregated Data.** On an aggregated basis together with other similar data from other Upsuite Operators so that the resulting "Statistical Data" is anonymous as to source;

in a manner in which the details and source of the information is not revealed – "Generic Data"; or where the Operator Data is further processed and analyzed utilizing Upsuite's methodology and other Upsuite inputs to generate "Analyzed Data" that protects the specific underlying subject property Operator Data.

Upsuite may disclose Statistical Data, Generic Data and Analyzed Data to any Upsuite Operators.

**Subcontractors.** Provider may subcontract any of the Services without Operator's prior written consent as long as the subcontractor agrees to meet the obligations of the agreement including the Confidentiality section of this agreement. Provider shall be responsible for any act or omission of any of its subcontractors as though it were Provider's own.

**Waiver.** Any waiver of a provision of this Agreement must be in writing and signed by the party waiving such provision. 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.

**Severability.** If any provision of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions will not be affected and will continue in full force and effect.

**Construction.** The naming of Section headings in this Agreement is for convenience of reference only and is not to be used in interpreting this Agreement. As used in this Agreement the word "including" means "including but not limited to".

**Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, and all of which together will constitute the same instrument. If this Agreement is executed in counterparts, no signatory shall be bound until both parties have executed their counterparts. This Agreement may be executed by facsimile and facsimile signatures shall be treated as if they were original signatures.

**Force Majeure.** Except for Operator's obligations to pay Provider hereunder, neither party shall be liable to the other party for any failure or delay in performance caused by reasons beyond its or its service providers' or suppliers' reasonable control, provided, however, that the party that is not relying upon this provision may terminate this Agreement if the failure or delay in performance continues for more than 10 days.

**Publicity.** Provider may, with Operator's prior written approval, identify the Operator as a customer during the term of this agreement, including using Operator's logo or commercial symbol. The Provider will not issue a release with information related to how the Operator utilizes its services without prior written approval from said Operator.

**Authorization:**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

<b>Upsuite Corp.</b>	<b>Customer</b>
By:  Name:  Title: Address for Notice: Upsuite Corp. 1900 Dartmouth Ave. Boulder, CO 80305	By:  Name:  Title:  Address for Notice: Company Name Address 1:  City, State, Zip:

## Exhibit A - Software Fees

### 1. SUBSCRIPTION SERVICES

1. Upsuite Flex Office Pro.

### 2. TERM

- Initial term of the agreement: Date to Date .

### 3. PAYMENT

- Monthly payment is due in full within 30 days of the invoice date.
- Upsuite agrees to provide Operator with written notice of renewal not less than 60 days before end of term.
- Upsuite also agrees to provide Operator with an invoice for said renewal not less than 30 days before end of term.

### 4. FEES

ITEM	LOCATIONS	PER LOCATION MONTHLY COST	ANNUAL COST
<b>FlexOffice Pro Basic Subscription</b> Provides access to data for one Operator location			
<b>Flex Office Pro Advanced Subscription</b>			
<b>Flex Office Pro Subscription</b> Provides access to more data for one Operator location			
<b>Other Fees (Integration, etc)</b>			
<b>Annual Subscription, invoiced monthly, due Net 30 days</b>			

Additional locations can be added to the contract at the same per month rate stipulated above and said locations will be added by calculating the pro-rated amount for the remainder of contracted term.

#### Payment Policy

Customer will be issued an invoice and receipt of payment for their records at the time payment is processed.

For any payment questions, feel free to reach out to the Upsuite billing team at [billing@upsuite.com](mailto:billing@upsuite.com).