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Terms of Service

Last updated 5 November 2026

These Terms of Service are entered into by Upsun and the entity or person agreeing to these Terms of Service (the "**Customer**").
They govern the Customer's subscription for Upsun Services and the use of said Services, except to the extent that: (i) Customer has executed a standalone agreement or master service agreement with Upsun, in which case Customer's use is governed by the terms contained within that executed agreement; or (ii) Customer has purchased Upsun services through a Marketplace or Reseller, in which case its access and use are governed by the *Terms of Service for Services Purchased via a Marketplace or Reseller* (available at https://upsun.com/trust-center/legal/tos-marketplace-and-reseller/).
If you are entering into this Agreement on behalf of a company or other legal entity that you represent, you represent and warrant that (i) you have the legal capacity to bind such entity to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Customer, to this Agreement. If you do not have such authority, and/or do not assent to this Agreement, you must not accept this Agreement on behalf of such entity and must not use Upsun Services.

1. **Definitions and interpretation**
   1.1. Capitalized terms used but not defined in these Terms of Service shall have the meaning given to them in the Service Specific Terms or any other document incorporated by reference into the Agreement.
   1.2. In these Terms of Service:
   - "**Agreement**" means these Terms of Service, the Service Specific Terms, any Order Form, the Acceptable Use Policy, and any documents referred to therein.
   - "**Acceptable Use Policy**" means the acceptable use policy available at https://upsun.com/trust-center/legal/aup/.
   - "**Account**" means a Customer account on the Platform.
   - "**Affiliate**" means an entity that controls, is controlled by, or is under common control with a Party, where "control" means control of more than fifty percent (50%) of the voting shares of such entity.
   - "**AI Feature**" means Upsun Dispatch and/or any feature, functionality or product powered by an Artificial Intelligence Model and made available by Upsun through Upsun Cloud.
   - "**Artificial Intelligence Model**" (or "**AI Model**") means any general-purpose artificial intelligence model, including any large language model, foundation model or multimodal model (able to generate code, text, image, video, etc.), that (i) is trained on broad data at scale, (ii) is designed to perform, or can be adapted to perform, a wide range of tasks beyond a single specific function, and (iii) is made available, or is intended to be made available, to third parties, whether by application programming interface, license, download, hosted service.
   - "**Beta Feature(s)**" means any beta, preview or prerelease features still undergoing testing, development, or that are not generally available.
   - "**Confidential Information**" means: (i) any non-public technical or business information of a Party, including without limitation, any information relating to a Party's techniques, algorithms, know-how, current and future products and

services, research, engineering, designs, financial information, procurement requirements, manufacturing, customers, business forecasts and marketing plans; and (ii) any other information that is designated as "confidential" or that should reasonably be understood by the receiving Party to be Confidential Information. Confidential Information will not include any information that (i) is or becomes generally known to the public through no fault or breach of this Agreement; (ii) the receiving Party can demonstrate was rightfully in its possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving Party without the use of or access to the disclosing Party's Confidential Information; or (iv) the receiving Party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure.

- "**Console**" means the web administration console in Customer's Account through which Customer manages its Projects.
- "**Content**" means all information and content relating to a Customer's Projects, including without limitation application code, related data files, written text, software or program source code, pictures, music, audio or video files, or other images or materials.
- "**EU Data Act Addendum**" means the supplemental terms, available at https://upsun.com/trust-center/legal/eu-data-act-addendum/, which set out the rights, obligations, and procedures applicable to the Parties in connection with service switching, data portability, data retrieval, and data erasure under Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 concerning harmonized rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (the "**EU Data Act**").
- "**Data Processing Agreement**" or "**DPA**" means the data processing agreement at https://upsun.com/trust-center/privacy/dpa/.
- "**Documentation**" means the documentation at https://docs.upsun.com/ or as otherwise referred to in an Enterprise Order Form.
- "**Fees**" means the Upsun Cloud fees and/or Upsun Dispatch fees as set out in the Price List.
- "**Input**" means all information, data, Content, instructions or prompts submitted, uploaded or otherwise made available by Customer or its Users to an AI Feature, or accessed by an AI Feature from internal systems or Third Party Services the Customer has connected to the Services.
- "**Managed Services**" means third-party services, components, or tools which are provided to Customer by Upsun as a managed service.
- "**Order Form**" means, collectively, a Self-Service Order, or a Contracted Commitment Addendum, or an Enterprise Order Form, in each case pursuant to which Customer subscribes to the Services, as further defined below:
    - "**Self-Service Order**" means an online order placed by Customer through a self-service purchasing workflow on the Platform;
    - "**Contracted Commitment Addendum**" means a document signed by both Parties under which Customer commits to a minimum spend on the Services over the Contracted Commitment Addendum term.
    - "**Enterprise Order Form**" means an ordering document signed by both Parties specifying the subscription terms, products, and Fees applicable to the Upsun Cloud Enterprise offering. The Enterprise offering is a legacy offering maintained for existing Enterprise customers and is not available to new customers and does not include any AI Features.
- "**Organization**" is a structured entity created by Customer in Customer's Account to group Customer's Projects for managing resources, access, and billing.

- "**Output"** means the suggestions, code, proposed changes, comments, status information and other results that an AI Feature generates from the Input and returns to the Customer, including where the AI Feature writes them into systems the Customer has connected (such as a source-code repository or issue tracker) as configured and authorized by the Customer. Output does not include the Customer's decision to accept, merge or deploy any results.
- "**Party**" means the Customer or Upsun, and collectively the "**Parties**".
- "**Platform**" means the Cloud-native application Platform-as-a-Service (PaaS) Upsun Cloud and/or the agent platform Upsun Dispatch.
- **"Price List**" refers to https://upsun.com/pricing for Upsun Cloud and/or https://upsun.com/dispatch/pricing for Upsun Dispatch, or to prices listed in an Enterprise Order Form executed by the Parties if different from https://upsun.com/pricing and/or https://upsun.com/dispatch/pricing.
- "**Privacy Notice**" means the privacy notice available at https://upsun.com/trust-center/privacy/privacy-notice/.
- **"Professional Services"** means all advisory, technical, implementation, and migration services, as distinct from the Upsun Platform, provided under the relevant SOW. These services may include, but are not limited to, initial onboarding, setup and go-live assistance, training and knowledge transfer on the Upsun core PaaS offering, data or application migration services, and application monitoring and maintenance services. Professional Services, however, expressly exclude support services, which are provided as part of the Upsun Platform.
- **"Professional Services Supplemental Terms"** means the supplemental terms governing the provision of Professional Services available at https://upsun.com/trust-center/legal/professional-services-terms/.
- "**Projects**" means Customer applications, data and related services developed and/or hosted on the Platform.
- "**Representatives**" means the Users, employees, agents, legal affiliates, consultants, or professional advisors of a Party.
- "**Services**" means Upsun Cloud and/or Upsun Dispatch.
- "**Service Specific Terms**" means the service-specific terms available at https://upsun.com/trust-center/legal/service-specific-terms/ or as otherwise referred to in an Enterprise Order Form.
- "**Statement of Work**" or **"SOW"** means any Statement of Work entered into by the Parties that describes Professional Services or any other ad hoc or custom services to be performed by Upsun.
- "**Third-Party Services**" means all third-party tools, systems, products, and websites accessed through the Platform or used by the Customer with the Platform but excluding Managed Services.
- "**Upsun Contracting Entity**" means the Upsun entity identified (i) in a Contracted Commitment Addendum, (ii) in an Enterprise Order Form, or (iii) in Exhibit 1 for a Self-Service Order.
- "**User(s**)" means any individual accessing or using the Services on behalf of Customer.

1.3. Order of precedence. Unless otherwise expressly agreed in writing between the Parties, in the event of any conflict or inconsistency between the documents forming this Agreement, the following order of precedence shall apply (in descending order of priority): (a) the Business Associate Agreement ("BAA"), if applicable; (b) the DPA; (c) the Contracted Commitment Addendum or Enterprise Order Form (as applicable); (d) the Service Specific Terms; (e) the Professional Services SupplementalTerms (if applicable); (f) the EU Data Act Addendum (if applicable); (g) these Terms of Service; and (h) the Acceptable Use Policy. For

the avoidance of doubt, each document shall prevail over those listed below it solely to the extent of the relevant conflict or inconsistency.

2. Order types

2.1. Customer may subscribe to the Services through one of the following order types, each part of and governed by this Agreement:

2.1.1. Self-Service subscriptions. Customer creates an Account and subscribes to the Services by placing a Self-Service Order online at the rates set out in the Price List. This Self-Service Order continues on a month-to-month basis, and may be terminated by Customer at any time in accordance with section 21.2 of these Terms of Service.

2.1.2. Committed spend. Customer executes a Contracted Commitment Addendum under which Customer commits to prepay a determined minimum amount of Fees over a term of no less than twelve (12) months. The terms governing the commitment, including its structure, duration, drawdown, overage, and expiry, are set out in the Contracted Commitment Addendum.

2.1.3. Enterprise subscriptions. Customer executes an Enterprise Order Form setting out the specific Services and products subscribed to, the applicable subscription term, and the Fees payable.

2.2. The Services ordered by Customer may come with resources and usage limits, as described in an Order Form, in the Price List, or in the Documentation. Usage in excess of the contracted scope and/or capacity may be allowed and billed as used.

3. Services

3.1. Upsun will provide the Services ordered by Customer in accordance with the Order Form, Service Specific Terms, the Documentation and this Agreement. Where applicable, the Services include the standard uptime commitment and support answer time commitment set out in the Service Specific Terms. The Service Specific Terms may also describe any optional advanced or premium support package and enhanced uptime service level offering that may be purchased by Customer.

3.2. Any order of Professional Services or ad hoc or customized professional services must be set out in a signed Statement of Work or included in an Order Form.

3.3. The Services may include AI Features, as further described in the Service Specific Terms or Documentation. AI Features may produce Outputs that are inaccurate, incomplete, similar to outputs generated for others, or unsuitable for Customer's intended use, and Customer is solely responsible for reviewing and validating any Output, and for any decision or action taken based on it. Where Customer authorizes an AI Feature to take an action on its behalf, that action is deemed to be an action of Customer, for which Customer is solely responsible. Except as set out in the applicable Service Specific Terms (e.g. for Freemium Services) or with Customer's prior consent, Upsun shall not use Customer Content, Input, or Output for AI Model training.

4. Data protection

4.1. Each Party shall comply with the Data Processing Agreement.

4.2. Upsun may collect personal data from Customer’s Users and/or employees, consultants, directors, or agents in connection with the Services. The Privacy Notice describes how Upsun collects, uses, and discloses such personal data.

5. Security

5.1. Upsun will maintain the technical and organizational security measures set out in the DPA.

5.2. Security and backups are a shared responsibility between Upsun and Customer, as further described in the Documentation. Customer is solely responsible for the security of any Project Customer deploys on the Upsun Cloud Platform. Upsun will regularly schedule automated backups of Customer production environments, as further described in the Documentation. Upsun may notify Customer of security vulnerabilities relating to elements under Customer's control and responsibility (e.g., application code, configuration of application, and routes managed through YAML files), but has no obligation to review or advise Customer of any security vulnerabilities. Customer must patch any notified vulnerabilities as soon as possible. Failure to do so may result in the immediate suspension of Customer Projects, at Upsun's sole discretion. Upsun is not responsible for any vulnerabilities relating to elements under Customer's control.

5.3. Upsun may provide templates and code examples in the Documentation, public repositories, and support interactions. It will make reasonable efforts to make sure these examples respect secure coding standards, but example code may not be ready for production settings. It is the Customer responsibility to make sure any application code Customer runs is up to date and secure, even when originally provided by Upsun.

6. Beta Features and Freemium Services

6.1. Upsun may allow Customer to try certain Beta Features. Beta Features are provided for evaluation purposes and are not intended for production use. Beta Features do not come with any uptime commitment or support obligation. Any Beta Features may be modified, removed, or discontinued, or made generally available to all Upsun customers for production use (including for a fee) at Upsun's sole discretion and without any liability to Customer. All Beta Features are provided "AS IS", without warranty or representation of any kind. Notwithstanding section 19 Liability, Upsun's liability for any damage arising out of or in connection with any Beta Feature is excluded in its entirety, including any obligation or liability with respect to Customer Content, except to the extent liability cannot be excluded or limited under applicable law. Customer assumes all risks associated with Customer use of a Beta Feature.

6.2. Upsun may make available a free-of-charge version of the Services ("**Freemium Services**") to allow Customer to evaluate the Platform. Freemium Services are subject to usage limits, as described in the Service Specific Terms, the Price List, the Documentation, or the Console, and Upsun may enforce such limits by restricting, throttling, or suspending Customer's access to the Freemium Services once a limit is reached. Freemium Services do not come with any uptime commitment or support obligation. Use of Freemium Services may be subject to additional data-use terms set out in the Service Specific Terms. Upsun may modify, restrict, or discontinue the Freemium Services, in whole or in part, at any time and at its sole discretion, without notice or liability to Customer. All Freemium Services are provided "AS IS," without warranty or representation of any kind. Notwithstanding section 19 Liability, Upsun's aggregate liability arising out of or in connection with Customer's use of the Freemium Services shall not exceed one hundred (100) EUR or equivalent in local currency, except to the extent liability cannot be excluded or limited under applicable law.

7. Third-Party Services and Managed Services

7.1. Upsun may provide Customer with direct access to, integrations, or connections with, Third Party Services. Upsun is not responsible for evaluating such Third Party Services. Access to Third Party Services is “as is” and “as available,” without any warranties or representations of any kind and without any endorsement. Upsun shall have no liability for any harm or damages related to Customer’s use of Third Party Services. Customer is solely responsible for assessing the suitability of any Third Party Service, for enabling or connecting only those Third Party Services reasonably necessary for Customer's intended use of the Services, and for the scope of access or permissions it grants to any Third Party Service. Customer's use of a Third Party Service is subject to that Third Party Service's own terms and privacy policy, and Upsun is not a party to that relationship. Any fees, charges, or other costs associated with a Third Party Service are Customer's sole responsibility. In the event that Customer or any Customer User consents to a third-party integration, Customer shall be deemed as agreeing to the passage of data to the provider of the integrated Third Party Service for the purposes of that integration.

7.2. Upsun will make reasonable efforts to maintain integration with Third Party Services and Managed Services. However, Upsun cannot guarantee the continued availability of any integrated or managed features and may cease to provide these without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a third-party service, tool, or component ceases to make its service, tool, or component available for integration with the Services in a manner acceptable to Upsun or changes the terms of the third-party services in a manner that no longer allows Upsun to provide said integration feature.

8. Changes to the Services

8.1. Upsun reserves the right to modify, add, or remove portions and/or functionality of the Services on a temporary or permanent basis, without liability to Customer. Except where an urgent change is required for security reasons, Upsun will notify Customer ahead of any material change by displaying a prominent notice within the Platform and/or by sending Customer an email. Except for changes that are implemented by Upsun for legal, regulatory or security reasons, if and to the extent a change introduced by Upsun has a material adverse effect on Customer’s use of the Services, Customer may, as its sole and exclusive remedy, terminate any active subscription and obtain a pro-rata refund of any prepaid and unused Fees. Customer’s failure to exercise its right to terminate and request a pro-rata refund within thirty (30) days from the day the change is released by Upsun will be deemed to be Customer’s acceptance of the revised Services.

8.2. AI Features may rely on AI Models and Upsun will select, configure, update, replace or withdraw these models at any time, in its sole discretion, including where required by a third-party AI Model provider. A change of AI Model shall not be deemed to be a change to the Services having a material adverse effect on Customer’s use of the Services.

9. Customer’s obligations

9.1. Customer must comply, and shall ensure that its Users comply, with the Acceptable Use Policy, applicable laws, and this Agreement.

9.2. Customer will ensure that its Users’ login details are kept confidential, are individual, and are not shared between several individuals.

9.3. Customer is liable for its Users’ acts and omissions as if they were acts and omissions of Customer. Customer will notify Upsun immediately and terminate

the relevant User(s)'s access to the Services should Customer become aware of (i) any breach of this Agreement by a User or (ii) any possible misuse of a User's login details.

9.4. Customer is solely responsible for the use and submission of Content and Input. Customer must make sure such Content and Input validly licensed to Customer for the intended use and Customer is solely liable for complying with any third-party intellectual property rights or licenses over any software or programs included in its Content and Input. If Customer's Projects developed or hosted on the Platform allow for third parties (including but not limited to end users of the Customer's applications) to publish, transmit, or host Content, Customer is solely responsible for any Content that breaches this Agreement or applicable law.

9.5. Customer agrees to immediately remove any Content that breaches this Agreement upon first request of Upsun or upon becoming aware of any such breach.

10. Customer Affiliates

10.1. Customer may enter into this Agreement on behalf of itself and its Affiliates and may enable Affiliates to use the Services under Customer's Account. Customer will remain liable for all obligations under this Agreement and any act or omission of any Affiliates will be deemed to be an act or omission of Customer. Any claim under this Agreement will be brought by or against Customer and not the Affiliate.

11. Fees, billing, and payment

11.1. Customer will pay Upsun the Fees set out in the Price List or in the Enterprise Order Form as applicable.

11.2. Bills are issued by Upsun by email to the billing contact registered in the Customer Account.

11.3. Fees and billing for Professional Services or any ad hoc services will be as set forth in the SOW.

11.4. Where Customer pays by credit or debit card or by direct debit: (i) by providing payment card information or authorizing direct debit, Customer authorizes Upsun to charge Customer's payment card or debit Customer's account automatically; (ii) Customer further authorizes Upsun to use a third party to process payments, and consents to the disclosure of Customer's payment information to such third party; and (iii) Customer must make sure its payment information is accurate and up to date at all times and maintain sufficient availability under its credit card limit or sufficient funds in the account linked to its payment card or direct debit authorization.

11.5. Upsun is not responsible for any (i) payment failure resulting from inaccurate or expired payment card details provided by Customer, (ii) restrictions applicable to the Customer's payment card by Customer's bank, or (iii) misuse, abuse, unauthorized use, or fraudulent use of Customer's payment cards.

11.6. If Customer wishes to dispute a payment, it must provide written notice of the dispute to Upsun promptly, and in any event no later than fifteen (15) days from the payment date. Initiating a chargeback or requesting a reversal through a bank or credit card provider does not relieve Customer of its obligation to notify Upsun directly. Customer and Upsun shall work together in good faith and without undue delay to resolve the dispute.

11.7. If Customer requires a purchase order or purchase order number, it must provide that purchase order number in the Order Form. Terms and conditions on any Customer purchase order are expressly excluded and shall be null and void.

12. Delinquent payments and payment disputes

12.1. Late payment interest is as follows:

Upsun Contracting Entity	Late Payment Terms
Platform.sh, Inc. doing business as Upsun Platform.sh Canada Sub, Ltd. doing business as Upsun Canada Sub Platform.sh Pty Ltd trading as Upsun	Interest at 1.5% per month or the maximum rate permitted by applicable law, whichever is greater, from the due date until paid.
Platform.sh SAS doing business as Upsun Platform.sh Limited trading as Upsun Platform.sh GmbH doing business as Upsun Platform.sh PAAS SP, SL doing business as Upsun	(i) Interest at the European Central Bank main refinancing rate plus 10%, from the due date until paid; and (ii) a fixed EUR/GBP 40 recovery-cost compensation per late invoice.

12.2. In the event Upsun brings a legal action for collection or hires an agent or authorized representative of collections due to overdue amounts, Customer will reimburse Upsun for all costs and expenses related to such collection, including but not limited to Upsun attorneys' fees, court costs, and any other related collection enforcement fees.

13. Taxes

13.1. All Fees are exclusive of tax. Customer must pay all taxes and duties assessed in connection with this Agreement, including any sales, use, value-added, withholding, and other taxes and duties. In the event tax is required by law to be withheld from the Fees, Upsun may gross up the invoice such that after the deduction of withholding tax, the original Fees are received in full by Upsun. In the event that any withholding taxes are paid by Customer, Customer shall provide Upsun with a valid withholding tax receipt in the Upsun Contracting Entity's name and all information reasonably required by Upsun within thirty (30) days following the payment.

14. Changes to prices

14.1. Subject only to section 14.3 below, Upsun may change the Fees and update the Price List at any time. Upsun must notify Customer of the change not less than thirty (30) days prior to the change taking effect.

14.2. If Customer objects to the updated Price List, Customer can terminate its subscription as its sole and exclusive remedy.

14.3. For Enterprise Order Forms, price changes and any right to terminate arising from a price change are as set out in the applicable Enterprise Order Form only.

15. Representations and warranties

15.1. When Platform.sh SAS doing business as Upsun, Platform.sh Limited trading as Upsun, Platform.sh PAAS SP, SL doing business as Upsun, Platform.sh GmbH doing business as Upsun, Platform.sh Canada Sub, Ltd. doing business as Upsun Canada Sub, or Platform.sh Pty Ltd trading as Upsun is the Upsun Contracting Entity:

15.1.1. Upsun warrants that the Services will conform in all material respects with the Service Specific Terms and Documentation when used in accordance with this Agreement. In the event of a breach of the foregoing warranty, Upsun's sole obligation, and Customer's sole and exclusive remedy shall be for Upsun to (i) issue a Service Credit to Customer in accordance with the subscribed service level agreement (where applicable), (ii) correct any

failure(s) of the Services to conform in all material respects with the Service Specific Terms and Documentation, or (iii) re-perform the Services at no additional cost to Customer.

15.1.2. This warranty does not apply to the Output, nor does it apply if the error or non-conformity was caused by: (i) Customer's breach of the Acceptable Use Policy or this Agreement, (ii) incidents caused by Customer's Projects (e.g. Project that exceeds the allocated resources, contains a programming error, failure to apply updates) and/or caused by failure of TLS certificates provided by Customer, (iii) any services or hardware of Customer or any Third Party Services or Managed Services used by Customer, or (iv) Customer Content and Input.

15.1.3. No implied warranty. Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law, the Services are provided on an "as-is" and "as available" basis, and neither Party makes any warranties of any kind, whether express, implied, statutory, or otherwise, and all implied warranties, including the implied warranties of merchantability and fitness for a particular purpose are hereby excluded.

15.2. When Platform.sh, Inc. doing business as Upsun is the Upsun Contracting Entity, the Services (including but not limited to products, functionalities, and information) are provided on an "AS IS" and "AS AVAILABLE" basis. TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, UPSUN HEREBY DISCLAIMS TO CUSTOMER OR TO ANY OTHER PERSON, INCLUDING ANY OF CUSTOMER'S USERS, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, UPSUN DOES NOT WARRANT THAT THE SERVICES, PRODUCTS, FUNCTIONALITY, DOCUMENTATION, OR INFORMATION, AS APPLICABLE, WILL MEET CUSTOMER'S REQUIREMENTS, OR BE UNINTERRUPTED OR ERROR-FREE, AND IT DOES NOT MAKE ANY REPRESENTATION REGARDING RESULTS OR USE IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR RISK OF INJURY.

15.3. The Customer represents and warrants that it owns or has obtained, and will maintain throughout the term of the Agreement, all rights, licenses and permissions necessary to use, process and submit the Customer Content and Input in connection with the Services, and that such use will not infringe or violate any third-party rights or applicable law.

16. Intellectual property

16.1. Upsun, and where applicable its licensors, are the sole and exclusive owners of all right, title, and interest in and to the Services.

16.2. Upsun hereby grants Customer a limited in time, worldwide, royalty-free, non-transferable, non-assignable, non-sublicensable, and non-exclusive right to use the Services as permitted by this Agreement and subject to the usage restrictions in the Acceptable Use Policy, Service Specific Terms, and Documentation.

16.3. Customer may not, and shall procure that Users, and others within Customer's control do not copy, republish, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; modify, translate, or create derivative works based on the Services; rent, lease, distribute, sell, resell, assign, or otherwise transfer intellectual property rights of the Services; use the Services for time-sharing or

service bureau purposes, or otherwise for the benefit of a third party, or remove any trademark or proprietary notices from the Services.

16.4. Customer, and where applicable, Customer licensors, are and will remain the sole and exclusive owners of all rights and title to and interest in the Content, the Input and the Output, to the extent any right, title or interest in the Outputs is attributable to the Customer under applicable law and without prejudice to third-party rights. Customer hereby grants to Upsun a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to host, reproduce, distribute, use, publicly perform, publicly display, and digitally perform the Content, the Input and the Output only as necessary to provide the Services (incl. Services improvement) or as otherwise allowed under this Agreement.

16.5. Upsun may state publicly that Customer is an Upsun customer by displaying Customer's name and logo in online or offline promotional materials, or on Upsun websites.

16.6. The Services provide Customer with ways to share feedback with Upsun. Customer has no obligation to provide feedback. However, if Customer submits feedback, Customer acknowledges that such feedback is free from any confidentiality restriction and Customer hereby grants Upsun a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, translate, create derivative works of, and otherwise commercially exploit such feedback. The foregoing grant of rights is made without any duty to account to Customer or Customer Users for the use of such feedback. No feedback will be considered Customer Confidential Information, and nothing in this Agreement limits Upsun's right to independently use, develop, evaluate, or market products or services, whether incorporating feedback or otherwise.

16.7. Any open-source software available through the Services is provided as-is and is not subject to the terms and conditions of this Agreement. Each item of open-source software is licensed under the end-user license that accompanies it.

17. Confidentiality

17.1. Each Party will, during the term of this Agreement and for a period of three (3) years after its termination or expiry, maintain in confidence all Confidential Information of the other Party and will not use such Confidential Information for any purpose, except as expressly permitted herein.

17.2. Each Party will limit the disclosure of such Confidential Information to those of its Representatives who need to access such Confidential Information and are subject to binding use and disclosure restrictions at least as protective as those set forth herein. The receiving Party will be liable for any act or omission of such Representatives that, if taken by the receiving Party, would constitute a breach of this Agreement. The receiving Party will notify the disclosing Party of any actual or suspected breach of this Confidentiality section.

17.3. The receiving Party may make disclosures to the limited extent required by law or court order, provided the receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the disclosing Party to participate in the proceedings (to the extent legally permitted).

17.4. In the event of a breach or threatened breach of this section by either Party, the other Party shall be entitled to seek preliminary and permanent injunctive relief (in addition to monetary damages and other remedies at law) to enforce the provisions hereof and shall be entitled to recover attorneys' fees incurred in connection therewith. Notwithstanding the foregoing, the remedies in this section

shall in no way be considered the exclusive remedies for a breach of this section by either Party.

18. Indemnification

18.1. Upsun hereby agrees to defend, indemnify, and hold Customer harmless from and against any and all liabilities, losses, damages, or expenses incurred by Customer arising out of or relating to any claim, suit, action or proceeding by a third party alleging that Customer's use of the Services in compliance with the terms of this Agreement infringes upon such third party's intellectual property rights. Upsun indemnification obligation does not apply to the extent the third-party claim arises out of or relates to (i) Customer breach of the Agreement, including the Acceptable Use Policy or Documentation, (ii) Customer Content, Input and Output, (iii) the use of the Services in connection with materials and/or technologies, including third-party materials and technologies, not provided by Upsun, (iv) violation of applicable laws, Customer fraud, or gross negligence, or (v) Beta Features, Freemium Services, or free trials.

18.2. Customer hereby agrees to defend, indemnify, and hold harmless Upsun and its Affiliates against all claims, settlements, procedures, expenses, damages, or suits (including attorneys' fees and expenses) resulting from Customer Content and Input and Customer's use of the Services in breach of the Acceptable Use Policy or this Agreement.

18.3. The above indemnification obligations are subject to the following: (i) the indemnified Party will promptly inform the indemnifying Party of the applicable claim, (ii) the indemnifying Party will have sole control of the defense and all related settlement negotiations with respect to the claim, provided the indemnifying Party may not settle the claim unless it unconditionally releases the indemnified Party of all liability or such settlement receives the indemnified Party prior approval, and (iii) the indemnified Party will, to the necessary extent and upon request of the indemnifying Party, fully cooperate to the claim investigation, defense, and trial.

19. Liability

19.1. When Platform.sh, Inc. doing business as Upsun is the Upsun Contracting Entity, the liability of the Parties is as follows:

19.1.1. IN NO EVENT SHALL UPSUN OR ITS SUBCONTRACTORS, LICENSORS, AFFILIATES, OR SUBSIDIARIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY, INCLUDING ANY END USER, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, GOODWILL OR SAVINGS, LOSS OR CORRUPTION OF DATA, DATA FILES, OR PROGRAMS, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF CUSTOMER OR UPSUN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL UPSUN AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY, INCLUDING ANY END USER, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT OF FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE LIABILITY AROSE. SUCH FOREGOING EXCLUSIONS, LIMITATIONS OF LIABILITY, AND

REMEDIES WILL APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, IN ALL ACTIONS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

19.1.2. EACH EXCLUSION AND LIMITATION IS INTENDED TO BE SEPARATELY ENFORCEABLE, WITHOUT REGARD TO THE OTHER EXCLUSIONS AND LIMITATIONS, AND WITHOUT REGARD TO WHETHER ANY OTHER REMEDY UNDER THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

19.2. When Platform.sh SAS doing business as Upsun, Platform.sh Limited trading as Upsun, Platform.sh PAAS SP, SL doing business as Upsun, Platform.sh Canada Sub, Ltd. doing business as Upsun Canada Sub, or Platform.sh Pty Ltd trading as Upsun is the Upsun Contracting Entity, liability of the Parties is as follows:

19.2.1. Upsun will not be liable to the Customer for any indirect, punitive, exemplary, special or consequential damages, including without limitation loss of profit, revenue, business interruption, procurement of substitute products or services, or other pecuniary loss arising out of the use of or inability to use the Services, even if Customer has been advised as to the possibility of such damages.

19.2.2. In no event will the aggregate liability of Upsun arising out of or related to this Agreement exceed the actual amount of Fees paid by Customer during the twelve (12) months immediately preceding the date the liability arose.

19.2.3. The limitation set forth in section 19.2.2 will not apply (i) in the event of gross negligence or willful misconduct, or to matters for which liability cannot be excluded under applicable law, and (ii) to the indemnification obligations under section 18 “Indemnification”.

19.2.4. The exclusions and limitations of liability in this section 19.2 apply to the fullest extent permitted by law, in all actions of any kind, whether based on contract, tort or any other legal or equitable theory.

19.3. When Platform.sh GmbH doing business as Upsun is the Upsun Contracting Entity, the liability of the Parties is as follows:

19.3.1. Upsun will be liable to Customer without limitation (i) in the event of willful misconduct (“Vorsatz”) or gross negligence (“grobe Fahrlässigkeit”), (ii) in the event of an injury to life, body or health, and (iii) for matters for which liability cannot be excluded under applicable law.

19.3.2. Upsun will be liable to Customer for damages resulting from the breach of its Primary Obligations (“Kardinalpflichten”) caused by slight negligence (“einfache Fahrlässigkeit”). Any such liability will be limited to the amounts of damages that are typical and foreseeable at the time of the conclusion of this Agreement and will, in no case, exceed the actual amount of Fees paid by Customer during the twelve (12) months immediately preceding the date the liability arose. In the sentence above, “Primary Obligation” refers to any obligation which is decisive for the conclusion of the Agreement and, on the performance of which, the other Party may legitimately rely.

19.3.3. Except as expressly set out in sections 19.3.1 and 19.3.2, Upsun’s liability will be excluded.

20. Suspension

20.1. Upsun may immediately suspend Customer access to Customer Account and/or suspend Customer Project(s) if Customer or any User(s) breach the Acceptable Use Policy or applicable law or as reasonably deemed necessary by Upsun to

prevent any harm to the Platform, to Upsun's customers, or to the underlying infrastructure.

20.2. Upsun may suspend Customer access to Customer Account and/or suspend Customer Project(s) eight (8) days from written notice to Customer if:

20.2.1. Customer fails to pay any amounts due under this Agreement; and/or

20.2.2. Customer fails to provide any document or information reasonably requested by Upsun and necessary for the billing of the Services.

20.3. Suspension will be lifted when the circumstances giving rise to the suspension have been resolved. Suspension does not relieve Customer from its payment obligations or prevent Upsun from exercising any right to terminate this Agreement under section 21 below.

21. Term and termination

21.1. This Agreement takes effect when Customer agrees to these Terms of Service and will continue until terminated in accordance with this section.

21.2. For a Self-Service Order, Customer may delete its Project(s) at any time. Deletion of all Customer Projects and Organizations will be interpreted by Upsun as a termination for convenience of Customer's Self-Service Order and this Agreement.

21.3. Where Customer has executed a Contracted Commitment Addendum or an Enterprise Order Form, (i) this Agreement continues for the duration of that Order Form term and any renewal thereof (where applicable); (ii) Customer may not terminate for convenience prior to expiry of the then-current Order Form term; and (iii) deletion of Customer's Projects and Organizations prior to expiry of the Order Form term does not terminate this Agreement or relieve Customer of its payment obligations for the remainder of the Order Form term.

21.4. Either Party may terminate this Agreement immediately on written notice to the other if the other Party is in breach of the Agreement and fails to cure that breach within thirty (30) days of receipt of written notice of the breach and a request to do so.

21.5. Upsun may terminate this Agreement:

21.5.1. immediately on written notice to Customer, if Customer's use of the Services breaches the Acceptable Use Policy or applicable law; or

21.5.2. with eight (8) days prior written notice if Customer fails to pay any amount due under this Agreement.

21.6. Upon termination or expiry of this Agreement, Customer rights and access to the Services will be terminated, and Upsun will delete all Customer Projects and Content without undue delay, unless otherwise required by applicable law or as reasonably necessary for the establishment, exercise, or defense of legal claims. It is Customer's sole responsibility to carry out any action necessary for the conservation or transfer of its Content.

21.7. Customer with a registered address in the European Union can make a request for data deletion or switching, pursuant to the EU Data Act. All such requests shall be subject to and governed by the EU Data Act Addendum, which is incorporated by reference into this Agreement.

21.8. All sections of this Agreement, which by their nature, extend beyond termination of this Agreement, shall survive the expiration or termination of this Agreement to the fullest extent necessary for their enforcement and for the protection of the Party in whose favor they operate, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

22. Force majeure

22.1. Except for payment obligations of amounts due under this Agreement, neither Party will be responsible for failure or delay of performance if caused by: an act of war, hostility, terrorism, riot; strike or sabotage; an act of God, like epidemic, fire, or floods; energy crisis or electrical, internet, or telecommunication outage that is not caused by the obligated Party; government restrictions or embargoes; or other event outside the reasonable control of the obligated Party. Such failure or delay will not be deemed to constitute a breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than sixty (60) days, the other Party may terminate this Agreement upon fifteen (15) days' prior written notice. Each Party will use reasonable efforts to mitigate the effect of a force majeure event.

23. Export control

23.1. Customer represents and warrants that Customer is not a restricted party (e.g., individual or entity that has been denied import or export privileges) and will comply with all applicable export control laws, regulations, and trade sanctions, including those emitted by the United Nations Security Council (UNSC), the US Government, the European Union or its Member States, the UK Government, the Government of Canada, and the Government of Australia. Customer further represents and warrants that: (i) Customer will not directly or indirectly use or allow Users to use the Services in a prohibited country (e.g., Cuba, Iran, North Korea, South Sudan, and Syria) or engage in any export or re-export activity with any entity or individual who Customer knows or has reason to know is engaging in the design, development, or production of nuclear, chemical, or biological weapons, or missile technology, and (ii) none of Customer, Customer's Affiliates, nor any of Customer's directors, officers, employees, and none of the Users of the Services is a sanctioned person.

24. Anti-bribery

24.1. Each Party shall comply with applicable laws concerning anti-bribery and anti-corruption, which may include the US Foreign Corrupt Practices Act of 1977, the French law of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life, known as "Sapin 2," and the UK Bribery Act 2010.

25. Non-consumer service

25.1. The Services are not designed primarily for personal, family, or household use, but rather are designed for purposes which are inside Customer's trade, business, craft, or profession. As such, and to the fullest extent allowed by applicable law, Customer understands and agrees that this Agreement is primarily deemed to be entered into between two professionals. Nonetheless, if Customer qualifies as a consumer under applicable law, and applicable law provides consumers with consumer-specific, statutory and non-waivable rights, then any such statutory provision will prevail over any conflicting terms of this Agreement.

25.2. If Customer is a UK or European Union resident: by agreeing to these Terms of Service, Customer consents to the immediate performance of this Agreement and acknowledges that it will lose its right of withdrawal from the Agreement once the ordered Services have been made available to Customer by Upsun.

26. Notices

26.1. Notices concerning the day-to-day operation of this Agreement shall be sent to:

26.1.1. Upsun via email through the Upsun support portal; and

26.1.2. Customer by posting notices within the Platform or by email to the Customer Account owner listed in the Customer Account.

26.2. All other notices shall be sent by email to legal@upsun.com for Upsun, or to the Customer Account owner listed in the Customer Account for Customer. Where applicable law requires delivery by express courier (with confirmation of delivery), notices shall be sent to the receiving Party's address set out in the applicable Contracted Commitment Addendum or Enterprise Order Form or, for a Self-Service Order, to the Upsun Contracting Entity's address set out in Exhibit 1 or to Customer's billing address listed in the Customer Account.

26.3. The Parties may use emails to satisfy written notice or consent requirements under this Agreement.

27. Changes to this Agreement

27.1. Upsun may, in its sole discretion, modify these Terms of Service or other documents incorporated by reference into these Terms of Service from time to time. When Upsun makes a material change to these documents, Upsun will provide Customer with prominent notice of that change by displaying prominent notice within the Platform and/or by sending Customer an email. To the extent any material change introduced by Upsun is materially less favorable to the Customer than the original terms, Customer may, as its sole and exclusive remedy, terminate this Agreement and obtain a pro-rata refund of any prepaid and unused Fees. Customer's failure to terminate this Agreement and to request a pro-rata refund within thirty (30) days from the day Customer is informed about the change will be deemed acceptance of the revised terms.

28. Governing law and jurisdiction

28.1. The Parties undertake to take all steps to reach a mutual agreement on any dispute arising in relation to the validity, interpretation, or fulfillment of this Agreement.

28.2. This Agreement is governed by the laws of the jurisdiction set out in the table below, applicable to the relevant Upsun Contracting Entity, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any dispute arising out of or in connection with this Agreement is subject to the exclusive jurisdiction of the courts set out below.

Upsun Contracting Entity	Governing Law	Exclusive Jurisdiction
Platform.sh, Inc. doing business as Upsun	California, USA	Courts of Los Angeles, California
Platform.sh Canada Sub, Ltd. doing business as Upsun Canada Sub	British Columbia, Canada	Courts of Vancouver, British Columbia
Platform.sh Pty Ltd trading as Upsun	New South Wales, Australia	Courts of Sydney, Australia

Platform.sh SAS doing business as Upsun	France	Commercial court of Paris or any court of competent jurisdiction in Paris, France.
Platform.sh Limited trading as Upsun	England and Wales	Courts of London, UK
Platform.sh GmbH doing business as Upsun	Germany	Courts of Berlin, Germany
Platform.sh PAAS SP, SL doing business as Upsun	Spain	Courts of Madrid, Spain

29. Miscellaneous

29.1. This Agreement is in English. Any translations produced in other languages are for convenience only. The English language version of this Agreement shall be controlling in all respects and shall prevail in the event of any inconsistencies with translated versions.

29.2. Except where expressly provided herein, no failure or delay by either Party in exercising any right or remedy under this Agreement will constitute a waiver of that right or remedy or any other right or remedy.

29.3. The Parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment, or franchise between the Parties. Neither Party nor its employees have the authority to bind or commit the other Party in any way or to incur any obligation on its behalf.

29.4. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be amended to achieve as nearly as possible the intent of the Parties, and the remainder of this Agreement will remain in full force and effect.

29.5. This Agreement shall constitute the entire agreement and understanding between Customer and Upsun and govern Customer's use of the Services, superseding any prior or contemporaneous agreements, communications, and proposals, whether oral or written, between Customer and Upsun.

29.6. Neither Party may assign this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement without the prior written consent of the other Party (i) to any of its Affiliates, (ii) in connection with a corporate reorganization, merger or consolidation of its business, or (iii) pursuant to the sale of all or substantially all of its assets. Notwithstanding the foregoing, for the purposes of verification and registration, if a Party assigns this Agreement in accordance with (i)-(iii) above, it will provide the other Party with prompt written notice and will together with its assignee provide and/or execute such additional documents and take such other actions as reasonably required by the other Party to register the assignment.

29.7. Except as expressly set out herein, there are no third-party beneficiaries under this Agreement.

Exhibit 1 **Upsun Contracting Entity for Self-Service Orders**

The Upsun Contracting Entity for Self-Service Orders is the Party identified in the table below, based on the billing address identified in the Customer Account.

Billing address	Upsun Contracting Entity	Address
France, and anywhere but one of the countries below	Platform.sh SAS doing business as Upsun RCS Paris 521 496 059	22 rue de Palestro 75002 Paris France
Spain	Platform.sh PAAS SP, SL doing business as Upsun CIF B75359323	Calle de Serrano 90 28006 Madrid Spain
Germany	Platform.sh GmbH doing business as Upsun HRB 87687 Amtsgericht Köln	Koblenzer Str. 11 50968 Köln Germany
United States of America	Platform.sh, Inc. doing business as Upsun EIN 26-2327825	106 S Main Street Suite 4 Brooklyn, MI 49230 USA
United Kingdom	Platform.sh Limited trading as Upsun Registered number 08247392	2 Maules Gardens Stoke Gifford Bristol BS34 8AN UK
Australia	Platform.sh Pty Ltd trading as Upsun ACN 624 859 052	16 Trinity Lane Woolloongabba QLD 4102 Australia
Canada	Platform.sh Canada Sub, Ltd doing business as Upsun Canada Sub BN 78651 4901	1200 Waterfront Centre 200 Burrard St PO BOX 48600 Vancouver BC V7X 1T2 Canada