

**Addendum**  
**Manufacturer Commercial Terms and Conditions**

Commercial Terms and Conditions for all Offerings to be provided by Manufacturer.

**MASTER SUBSCRIPTION AGREEMENT**

This Master Subscription Agreement is between the GSA Multiple Award Schedule Contractor acting on behalf of Uptake Technologies, Inc. (“Uptake”) and the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity”). This Master Subscription Agreement and any Order Forms referencing it constitute the “Agreement.”

**1. INTRODUCTION**

This Agreement contains the terms and conditions that govern (a) Customer’s and Customer’s Authorized Users’ access to and use of the product(s) listed on an Order Form (the “Product”), and (b) Uptake’s provision of certain services to the Customer as described in an Order Form (the “Services”).

**2. DELIVERY AND USE OF THE PRODUCT AND SERVICES**

*Delivery.* Uptake will make the Product available to Customer during the Term and in accordance with the Service Level Addendum attached as Appendix A. Uptake’s delivery is subject to Customer providing all necessary information and performing its obligations under this Agreement. Products and services will be provided in English.

*Updates.* Any updates to the Product made available to Customer will be subject to the terms of this Agreement unless otherwise indicated. Certain features and functions of the Product may depend on or be limited by the design and configuration of Customer’s or its Authorized Users’ systems or the availability of Customer Data.

*Access to and Use of Product.* Customer may access and use the Product via the internet and may display the Product to its Authorized Users per the terms of this Agreement. Customer will (a) prevent unauthorized access to or use of the Product and notify Uptake promptly of any such unauthorized access or use, (b) use the Product only for its legitimate internal business purposes in accordance with this Agreement and applicable laws and regulations, and (c) comply with terms of service of any non-Uptake applications with which Customer uses the Product.

*Restrictions on Use.* Customer will not (a) make any part of the Product available to, or use any part of the Product for the benefit of, anyone other than Customer or its Authorized Users, (b) sell, resell, license, sublicense, transfer, assign, distribute, make available, rent or lease any part of the Product, or include any part of the Product in a service bureau or outsourcing offering, (c) use the Product to store or transmit infringing or libelous material or to store or transmit material in violation of third-party privacy

rights, (d) use the Product to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of any part of the Product or third-party data contained therein, (f) attempt to gain unauthorized access to any part of the Product or its related systems or networks, (g) permit direct or indirect access to or use of any part of the Product in a way that circumvents a contractual usage limit, or use any of part of the Product to access or use any of Uptake's intellectual property except as permitted under this Agreement, (h) copy the Product or any part, feature, function or user interface thereof, (i) copy non-Customer content except as permitted herein, (j) frame or mirror any part of the Product, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes, (k) access any part of the Product in order to build a competitive product or service, or (l) reverse engineer any Product (to the extent such restriction is permitted by law).

*Hardware.* Hardware provided for use with the Product is provided in accordance with this Agreement, Hardware may have third-party provider terms separate from those of this Agreement. Nothing herein shall bind the Ordering Activity to any Third-Party Provider terms unless the terms are provided for review and agreed to in writing by all parties. Customer may only use the hardware with the Product and for no other purpose. Upon termination or expiration of this Agreement, Customer will return the hardware to Uptake, attention: Hardware Returns, at 600 W. Chicago Ave., Suite 620, Chicago, IL 60654.

### **3. AUTHORIZED USERS**

The Product may be accessed or used only during the Term by Customer and its Authorized Users. "Authorized User" means an employee or independent contractor of Customer or its affiliates working on Customer's behalf or for Customer's benefit. To register and use the Product, Authorized Users must create a user name and password, provide Uptake with true, accurate, current and complete registration information, and update such information when necessary. If Uptake has reasonable grounds to suspect that any information provided by an Authorized User is inaccurate, incomplete or untrue, Uptake may temporarily suspend Customer's and/or the Authorized User's right to use Product. Customer will be responsible for its Authorized Users' compliance with this Agreement, and a breach of this Agreement by an Authorized User will be considered a breach of this Agreement by Customer.

### **4. DATA COLLECTION, OWNERSHIP, AND USE**

*Use of Customer Data.* "Customer Data" means all data generated by and associated with a particular Customer asset that is transmitted to Uptake for use in the Product. Uptake claims no ownership of Customer Data; however, Customer represents and warrants that it has the right to make the Customer Data available to Uptake, and Customer grants Uptake and its Authorized Personnel the right to review, copy, and otherwise use the Customer Data to provide the Product. Customer is responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired the Customer Data.

*Aggregated and Anonymized Data.* Customer acknowledges that Uptake uses aggregated and anonymized data and system usage information to monitor and improve the Product and to create new products. This aggregated and anonymized data is no longer associated with any particular Customer

asset and as such is not Customer Data. Uptake will not attempt to disaggregate the data or re-associate it with an asset without Customer's consent or unless legally compelled to do so.

*Data and Information Systems Security.* Each party will establish and maintain reasonable environmental, safety and facility procedures, data security procedures, and other safeguards against the unauthorized, accidental, or unlawful processing, destruction, loss, alteration, or theft of or unauthorized disclosure of or access to any Customer Data or to the information systems used with the Product. Such procedures and safeguards shall be at least as rigorous as those used by similar companies providing similar services and shall be adequate to meet the requirements of applicable laws, provided that in no circumstance will any party employ standards that are less protective than that party uses for its own data of similar nature. Neither party shall take any steps to attempt to circumvent or defeat any security controls related to the Product or the other party's information systems.

## **5. CONFIDENTIALITY**

*Confidential Information.* "Confidential Information" means any business, financial, operational or technical information disclosed by one party to the other and not generally known by or disclosed to the public. Confidential Information does not include information that is: (i) already known to or otherwise in the possession of a party at the time of receipt from the other party, provided such knowledge or possession was not the result of a violation of any obligation of confidentiality; (ii) publicly available or otherwise in the public domain prior to disclosure by a party; (iii) rightfully obtained by a party from any third party having a right to disclose such information without breach of any confidentiality obligation by such third party; or (iv) developed by a party independently.

*Confidentiality Obligations.* Each party shall maintain the other party's Confidential Information in confidence and will protect such information with the same degree of care that such party exercises with its own Confidential Information, but in no event less than a reasonable degree of care. If a party suffers any unauthorized disclosure of the other's Confidential Information, then that party shall promptly notify the disclosing party and take such actions as may be reasonably requested to minimize the damage that may result. Except as provided in this Agreement, a party shall not disclose (or allow the use or disclosure of) any Confidential Information of the other party without the other's express prior written consent, unless disclosure is required by applicable law or a valid legal order (provided that the disclosing party inform the other party prior to such disclosure if legally allowed). Access to and use of any Confidential Information shall be restricted to Authorized Personnel who have a need to use the information to perform under this Agreement or, in the case of Customer, use the Products. A party's affiliates, vendors, and contractors may be included within the meaning of "Authorized Personnel" provided that affiliates, vendors, and independent contractors have executed a confidentiality agreement with provisions similar to those contained in this section. A party may disclose information concerning this Agreement to any of the following: (a) potential acquirers, merger partners, investors, lenders, financing sources, and their personnel, attorneys, auditors and investment bankers, solely in connection with the due diligence review of such party by persons and provided that such disclosures are made in confidence, (b) the party's outside accounting firm, or (c) the party's outside legal counsel. A party may also disclose this Agreement in connection with any litigation or legal action concerning this Agreement. Uptake **recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.**

*Return of Confidential Information.* All Confidential Information shall remain the property of the disclosing party. All Confidential Information shall remain the property of the disclosing party.

*Current as of October 11, 2018*

Following expiration or termination of this Agreement, the receiving party shall return or destroy the other party's Confidential Information upon request.

## **6. PRIVACY**

*Privacy Notices.* In using the Product, Customer and its Authorized Users may provide Personal Data to Uptake. Uptake will use Personal Data in accordance with the Product Privacy Notice and this Agreement. By using the Product, Customer and its Authorized Users consent to the collection, use, disclosure, and other processing of Personal Data in accordance with this Agreement and the Product Privacy Notice. "Personal Data" means any information relating to an identified or identifiable natural person, which information can, directly or indirectly, identify that natural person.

*Compliance with Laws.* In relation to all Personal Data, Customer will remain the controller and will be responsible for compliance with all applicable Federal data protection laws and regulations of the United States. To the extent Uptake processes Personal Data under this Agreement, it shall do so only as the processor acting on behalf of Customer (as "controller") and in accordance with the requirements of this Agreement and the Product Privacy Notice. The terms "controller" and "processor" shall have the meanings given to them in the General Data Protection Regulation (Regulation (EU) 2016/679) or any other data protection law or regulation applicable to Personal Data processed under this Agreement.

## **7. RESERVATION OF RIGHTS**

Subject to the limited rights expressly granted to Customer in this Agreement, Uptake reserves all right, title, and interest (including intellectual property rights) in and to Uptake's products, including any replacements, improvements, updates, enhancements, derivative works, and other modifications to the same. No rights are granted to Customer in this Agreement other than those expressly granted in Section 2.

## **8. SUSPENSION AND TERMINATION**

*Term.* The term of this Agreement for each Product and Service is set forth on the Order Form (the "Term").

*Uptake's Right to Terminate or Suspend.* Uptake may temporarily suspend Customer's access to the Product if Uptake has reason to believe that Customer or its Authorized Users are using it unlawfully or in a manner that threatens the security or integrity of the Product. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Uptake shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

*Current as of October 11, 2018*

*Survival.* The provisions under the headings Data Collection, Ownership, and Use; Reservation of Rights; Warranties, Limitations of Liabilities, and Indemnities; and Governing Law, Dispute Resolution, and Mandatory Arbitration shall survive the expiration or termination of this Agreement.

*Force Majeure.* Excusable delays shall be governed by FAR 52.212-4(f).

## **9. WARRANTY AND LIMITATION OF LIABILITY**

*Warranties.* **Uptake warrants that the Product will perform in substantial conformance with the documentation.** Uptake makes no guarantee that the Product will predict or prevent all asset issues or failures. Uptake warrants that all Services provided under this Agreement shall be performed in a professional and workmanlike manner. Uptake makes no other warranties regarding the Product or Services, and disclaims all warranties, express and implied, including but not limited to any warranty of merchantability or fitness for a particular purpose.

*Limitations of Liability.* **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR LOST PROFITS OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER IN CONTRACT OR TORT. IN NO EVENT SHALL UPTAKE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE PRODUCT. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY LIMITED REMEDY UNDER THE AGREEMENT.** The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from the Vendor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

## **10. OTHER**

*Entire Agreement, Modifications and Waivers.* This Agreement, together with its Appendices and attachments, the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), constitutes the entire agreement of the parties. Except as otherwise provided, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needs.

*Assignment.* Customer may not assign this Agreement without Uptake's prior written consent. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Uptake may assign this Agreement in connection with the sale of substantially all of its assets or Uptake's stock, upon notice to Customer and in accordance with the procedures for securing such approval are set forth in FAR 42.1204.

*Export Controls.* Each of Uptake and Customer shall comply with the export laws and regulations of the United States and any other applicable jurisdiction in providing, accessing, and using the Product, Customer Data, and Uptake Data. Without limiting the foregoing, Customer represents and warrants that it is not named on any U.S. government denied-persons or other screening list, and Customer will not

*Current as of October 11, 2018*

make the Product available (a) to any user or entity that is located in a country subject to a U.S. government embargo, (b) to any user or entity that is listed on a denied-persons or other screening list, or (c) otherwise in violation of export control laws or regulations (including by failing to obtain or observe the terms and conditions of an export license).

*Notices and Inquiries.* All notices required to be delivered in writing should be sent to [legal@uptake.com](mailto:legal@uptake.com). All other inquiries, including requests for support, should be directed to [support@uptake.com](mailto:support@uptake.com).

**Appendix A**  
**SERVICE LEVEL ADDENDUM**

1. Availability Level. The Product will be materially operational and functional (i.e., a majority of cards functioning and the Product capable of displaying and processing information as contemplated in the ordinary course of business) (“Available”) during any 30-day period: (i) 99.8% of the time during the hours of 9:00 a.m. to 8:00 p.m. EST, Monday through Friday (“Core Hours”) and (ii) 98% of the time during all other hours (“Non-Core Hours”, and each such percentage, a “Required Availability Level”). The “Actual Availability Level” of the Product will be measured using the following calculation:

$$(X/Y) \times 100\%$$

Where:

X = Minutes that the Product is Available during the Core Hours or Non-Core Hours (as applicable) during the 30-day period; and

Y = Total minutes during the Core Hours or Non-Core Hours (as applicable) during the 30-day period less Minutes of Excused Downtime during the Core Hours or Non-Core Hours (as applicable) during the 30-day period.

2. “Excused Downtime” means downtime that is caused by or due to (i) factors outside Uptake’s reasonable control, including, but not limited to an event of Force Majeure (as set forth in the Master Subscription Agreement), Internet service provider failures or delays, or denial of service attacks; (ii) any acts or omissions of Customer or any third party; (iii) Customer and/or third-party equipment, software, or other technology (other than third-party equipment within Uptake’s direct control) or Customer’s requested changes to the hardware environment on which the Product is hosted; and (iv) Maintenance.
3. “Maintenance”, as used in the Actual Availability Level formula, means scheduled maintenance and take down of the Service to conduct scheduled file and data transfer and synchronization, maintenance and take down of related hosting equipment, software, and telecommunications equipment (such maintenance to occur at any reasonable time to minimize the impact on users). Uptake will not perform any scheduled maintenance during the Core Hours without providing Customer electronic notice of planned maintenance at least 24 hours in advance of such maintenance.
4. Security Standards. Uptake shall obtain and maintain certification or compliance with appropriate industry standards that shall include, at a minimum, ISO 27001.