

UPSTREAM TECH HYDROFORECAST™ TERMS OF SERVICE

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

THIS IS A LEGAL DOCUMENT BETWEEN YOU AND UPSTREAM. PLEASE READ IT. BY ACCESSING OR USING THE HYDROFORECAST SERVICE, YOU: (i) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL OF THE TERMS IN THIS AGREEMENT; AND (ii) EXPRESSLY AGREE TO THE TERMS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE HYDROFORECAST SERVICE. If you agree to the terms of this Agreement, you have the following rights, obligations and responsibilities:

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. “Confidential Information” means business, technical or financial information relating to the Disclosing Party’s business.
- 1.2. “Customer Data” means non-public data provided by Customer to Company to enable the provision of the Services.
- 1.3. “Disclosing Party” means the Party disclosing Confidential Information.
- 1.4. “EULA” means the applicable End User License Agreement referenced on the applicable Order Form.
- 1.5. “Fees” means fees described in the applicable Order Form or Scope of Work for the Services.
- 1.6. “Force Majeure Events” means fire, earthquake, labor dispute, act of a public enemy, death, illness, or any other event beyond Company’s control.
- 1.7. “Order Form” means the form specifying the Subscription Services provided by Company to Customer and the Fees to be paid by Customer to Company for such Subscription Services.
- 1.8. “Platform” means certain software applications together with any applicable documentation thereto, and programming and user interfaces therefor.
- 1.9. “Professional Services” means all implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management related to Customer’s access to and use of the Subscription Services and each Platform.
- 1.10. “Receiving Party” means the Party receiving Confidential Information.
- 1.11. “Scope of Services” means the combination of applicable Order Forms and Scopes of Work.
- 1.12. “Scope of Work” means the form specifying the Professional Services contracted by Customer from Company and the Fees to be paid by Customer to Company for such Professional Services.
- 1.13. “Services” means the combination of either or both Subscription Services and Professional Services.
- 1.14. “Services Effective Date” means the applicable date of the start of the Services defined in the Scope of Services.
- 1.15. “Service Term” means the period defined on the applicable Scope of Services.
- 1.16. “Subscription Services” means hosted “software as a service” for one or more Platforms.
- 1.17. “Term” means the period from the Services Effective Date through the end of the Service Term or until termination.

2. SERVICES

- 2.1. Purpose: This Agreement sets forth the terms and conditions under which Company agrees to provide (i) certain Subscription Services to End Users, as further set forth on each Order Form, and (ii) if applicable, Professional Services, as further set forth on each Scope of Work issued hereunder.
- 2.2. The Services; Access and Use License: Subject to the terms and conditions of this Agreement and the EULA (available at <https://www.upstream.tech/licenses>), during the Term, Company shall use commercially reasonable efforts to provide (i) Customer and End Users access to each Platform, and (ii) Customer the Professional Services. Subject to the terms and conditions of this Agreement and the applicable EULA referenced in the Order Form, during the Term, Company hereby grants Customer and End Users a non-exclusive, non-sublicensable, non-transferable, worldwide license to access and use each Platform, solely for internal business purposes as set forth herein. The definition of End User in the EULA shall apply throughout this Agreement, the EULA, and all subsequent Order Forms and Scopes of Work.
- 2.3. Subscription Services: Each applicable Order Form shall specify and further describe the Subscription Services to be provided in accordance with the representations and warranties set forth herein, and shall identify, each applicable Platform, user limitations, fees, the subscription term and other applicable terms and conditions.

- 2.4. Professional Services: As relevant, each applicable Scope of Work shall specify and further describe the Professional Services to be provided in accordance with the representations and warranties set forth herein, and may, but need not, include, the Professional Services offered, limitations, milestones, fees, the term and other applicable terms and conditions.
- 2.5. Changes to Platform: Company may, in its sole discretion but with reasonable notice to the Customer, make any changes to any Platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Company's products or services to its customers, (b) the competitive strength of, or market for, Company's products or services, (c) such Platform's cost efficiency or performance, or (ii) to comply with applicable law.

3. FEES AND PAYMENT

- 3.1. Fees: Customer shall pay Company the Fees described in the applicable Order Form or Scope of Work for the Services in accordance with the terms herein. Any change resulting in additional or modified Services to Customer shall be mutually agreed upon by the Parties in writing with an additional Order Form or Scope of Work, or in other form of mutually agreed upon language in writing, prior to any further invoicing by Company. Customer shall be invoiced accordingly and dependent on the amount of additional Services fulfilled.
- 3.2. Renewal Fees: Company shall have the right to change the Fees or applicable charges and to institute a revised Fee structure at the end of the initial Service Term or at the end of the then-current renewal Service Term.
- 3.3. Payment: Company may choose to bill through an invoice, in which case, full payment for invoices issued must be received by Company thirty (30) days after the mailing date of the invoice. Past due amounts are subject to a finance charge of 0.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate suspension of the Services. If any amounts owed by Customer for the Services are thirty (30) or more days overdue, Company may, without limiting Company's other rights and remedies, suspend Customer's access to the Services until such amounts are paid in full.
- 3.4. Payment Disputes: If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than thirty (30) days after the invoice date in which the believed error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Company's accounting department by email to accounting@upstream.tech.
- 3.5. Taxes: Customer shall pay for all applicable transaction taxes relating to Company's provision of the Services hereunder. The Fees set forth in the applicable Order Form are exclusive of transaction taxes, including sales and use and value-added taxes.

4. CONFIDENTIALITY

- 4.1. Confidential Information: Each Party understands that the other Party has disclosed or may disclose Confidential Information. Confidential Information of Company includes non-public information regarding features, functionality and performance of the Platform and the Services provided by Company subject to this Agreement. Confidential Information of Customer includes the Customer Data. The Receiving Party shall not disclose Confidential Information to any person or entity other than its officers, employees, contractors and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.
- 4.2. Exceptions: Notwithstanding anything to the contrary contained herein, Confidential Information shall not include any information that the Receiving Party can demonstrate (i) is or becomes generally available to the public (other than the through the breach or violation of this Section 4 by the Receiving Party), (ii) was in its possession or known by it prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to it without restriction by a third party, or (iv) was independently developed without use of any Confidential Information of the Disclosing Party.
- 4.3. Non-Use and Non-Disclosure: With respect to Confidential Information of the Disclosing Party, the Receiving Party agrees to: (i) protect the confidentiality, and prevent the unauthorized use or disclosure, of such Confidential Information using the same degree of care it uses to protect its own proprietary and confidential information of like kind or nature, which shall not be less than a reasonable degree of care, (ii) hold all such Confidential Information in strict confidence and not use, sell, copy, transfer reproduce, or divulge such

Confidential Information to any third party, (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, this Agreement.

- 4.4. **Compelled Disclosure:** Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall take reasonable efforts to (i) assert the confidential nature of the Confidential Information to the agency; (ii) notify the Disclosing Party in writing of the agency's order or request to disclose; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.
- 4.5. **Remedies for Breach of Obligation of Confidentiality:** The Receiving Party acknowledges that the breach of its obligations of confidentiality and non-use set forth in this Section 4 may cause irreparable harm to the Disclosing Party for which the Disclosing Party may not be fully or adequately compensated by the recovery of monetary damages. Accordingly, in the event of any breach, or threatened breach, by the Receiving Party of its obligations under this Section 4, the Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.

5. PROPRIETARY RIGHTS

- 5.1. **Customer Proprietary Rights:** Customer shall own and retain all right, title and interest in and to the Customer Data.
- 5.2. **Company Proprietary Rights:**
 - 5.2.1. Company shall own and retain all right, title and interest in and to (i) data that is based on or derived from the Customer Data and provided to Customer as part of the Services, (ii) the Services and Software, all improvements, enhancements or modifications thereto, (iii) any software, applications, inventions or other technology developed in connection with the Professional Services, and (iii) all intellectual property rights related to any of the foregoing.
 - 5.2.2. Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

6. TERM AND TERMINATION

- 6.1. **Term:** This Agreement shall remain in effect until its termination as provided below. The term of each Scope of Services shall begin on the applicable Services Effective Date and continue for the Service Term, in each case as specified in the applicable Scope of Services.
- 6.2. **Termination:** This Agreement may be terminated as follows:
 - 6.2.1. In addition to any other remedies it may have, either Party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other Party materially breaches any of the terms or conditions of this Agreement.
 - 6.2.2. Company may terminate this Agreement at any time if no Scope of Services is in effect by providing written notice of termination to Customer. Notice shall be delivered at least fifteen (15) days prior to the termination date contained in the notice, unless otherwise agreed in writing by the Parties. Customer may terminate this Agreement at any time for convenience upon thirty (30) days' prior written notice to Company.
 - 6.2.3. Company may terminate this Agreement upon written notice to Customer in the event that Company determines, in its reasonable, good faith discretion, that Customer is in violation of, or is otherwise

using the Services in any manner that violates, Upstream's Code of Ethics, available at <https://upstream.tech/ethics>.

- 6.3. Effect of Termination: Upon termination of the Agreement, each outstanding Scope of Services, if any, shall terminate and Customer shall immediately cease all use of, and all access to, the Subscription Services and Company shall immediately cease providing the Professional Services. If (i) Company terminates this Agreement pursuant to Section 6.2.1 or Section 6.2.3, or (ii) Customer terminates this Agreement pursuant to the last sentence of Section 6.2.2, all Fees that would have become payable had each outstanding Scope of Service remained in effect until expiration of its current term will become immediately due and payable. Upon any termination, Company may, but is not obligated to, delete stored Customer Data.
- 6.4. Survival: Sections 3-5, 6.3, 6.4, and 8-14 shall survive any termination or expiration of this Agreement. All other rights and obligations shall be of no further force or effect.

7. REPRESENTATIONS & WARRANTY DISCLAIMER

- 7.1. Each Party represents and warrants that it has the legal power to enter into this Agreement.
- 7.2. Customer's Representation: Customer warrants that (i) Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of all of the Customer Data that is placed on, transmitted via or recorded by a Platform and the Services; (ii) the provision and use of Customer Data as contemplated by this Agreement and each Platform and the Services does not and shall not violate any Customer privacy policy, terms-of-use or other agreement to which Customer is a party or any law or regulation to which Customer is subject to; and (iii) no Customer Data will include social security numbers or other government-issued identification numbers, financial account numbers, credit card or debit card numbers, credit report information or other personal financial information, health or medical information or other information that is subject to international, federal, state, or local laws or ordinances now or hereafter enacted regarding data protection or privacy.
- 7.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN A SCOPE OF SERVICES, COMPANY DOES NOT WARRANT THAT ACCESS TO THE PLATFORMS, SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. FURTHER, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SERVICES PROVIDED BY THIRD PARTY TECHNOLOGY SERVICE PROVIDERS RELATING TO OR SUPPORTING A PLATFORM, INCLUDING HOSTING AND MAINTENANCE SERVICES, AND ANY CLAIM OF CUSTOMER ARISING FROM OR RELATING TO SUCH SERVICES SHALL, AS BETWEEN COMPANY AND SUCH SERVICE PROVIDER, BE SOLELY AGAINST SUCH SERVICE PROVIDER. THE PLATFORMS, SOFTWARE AND SERVICES ARE PROVIDED "AS IS," AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. INDEMNITY

- 8.1. Company shall defend Customer from any claim by a third party that the Services infringe any United States patent or copyright or misappropriate any trade secret, and shall pay any settlement amounts and/or any resulting damages, costs and expenses finally awarded to a third party as a result of any such claim, provided that (i) Customer promptly notifies Company of the claim, (ii) Company is given the exclusive control of the defense and settlement (including all decisions relating to litigation, defense and appeal) of the claim, and (iii) Customer gives reasonable assistance to Company in its defense and settlement of the claim. The foregoing obligations do not apply with respect to (a) portions or components of the Services (1) not supplied by Company, (2) made in whole or in part in accordance with Customer specifications, (3) that are modified by Customer after delivery by Company, (4) combined with other products, processes or materials where the alleged infringement relates to such combination, (b) where the claim is based on or arises out of (1) Customer continuing the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (2) Customer's use of the Services not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (i) replace or modify the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (ii) obtain for Customer a license to continue using the Services, or (iii) if neither of the foregoing is commercially practicable, terminate this Agreement and

Customer's rights hereunder and provide Customer a refund of any prepaid, unused Fees paid by Company for the infringing Services. THE FOREGOING STATES THE ENTIRE LIABILITY OF COMPANY WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SERVICES OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF COMPANY WITH RESPECT THERETO. NO INDEMNITIES OF ANY KIND WHATSOEVER ARE MADE FOR CUSTOMER'S BENEFIT FOR ANY PILOT OR EVALUATION USE.

9. LIMITATION OF LIABILITY

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

10. PROMOTION

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

11. ASSIGNMENT

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

12. NOTICES & COMMUNICATIONS

12.1. Notices: All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

12.2. Company Contact: All notices or questions relating to invoices and payments should be directed by email to accounting@upstream.tech. All communications related to this Agreement that are not invoice or payment related should be directed by email to legal@upstream.tech. Written communications should be sent to:

Upstream Tech
Attn: Legal Department
444 Somerville Ave
Somerville, MA 02143

12.3. Customer Contact: All invoices and any other notices for this contract should be directed by email or mail to the contact noted in the relevant Order Form or Scope of Work.

13. GOVERNING LAW

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

14. GENERAL PROVISIONS

- 14.1. Entire Agreement: This Agreement, together with Scope of Services entered into hereunder and all exhibits, annexes and addenda hereto and thereto is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications to this Agreement must be in a writing signed by both Parties, except as otherwise provided herein.
- 14.2. Precedence: In the event of a conflict between this Agreement and any Scope of Services, such Scope of Services shall prevail unless otherwise expressly indicated in this Agreement or such Scope of Services.
- 14.3. Severability: If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 14.4. No Waiver: No failure or delay by either Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this Agreement.
- 14.5. Force Majeure: Company shall not be deemed in breach of this Agreement if Company is unable to complete the Services or any portion thereof by reason of Force Majeure Events. Upon occurrence of any Force Majeure Event, Company shall give notice to Customer of its inability to perform or of any interruption in the Services and shall provide regular updates on when the Services can resume.
- 14.6. Independent Contractors: The Parties to this Agreement are independent contractors only. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither Party has authority of any kind to bind the other Party in any respect whatsoever.
- 14.7. Reservation: Company reserves all remedies available at law or equity for any disputes that arise under this Agreement.