

# Terms of Service

## Upstream Solutions Pty Ltd (Upstream) – Visitor Manager Central (VMC) Software License Agreement

*Last updated on 1 April 2021*

VMC is a software solution designed to allow companies to manage digital collection of data at their office locations in a highly efficient manner. It is our aim to deliver everything one would expect from a digital data-management software solution for the office environment, including managing and archiving a list of visitors; printing badges; generating reports; allowing for pre-registration or self-registration; managing meeting rooms; booking assets; operating events at the office; managing suppliers and third parties at the office; and various related office tasks. We may also offer other features from time to time that aim to help with the management of visitors, employees and office space.

The following terms and conditions (Terms) form a legally binding agreement between you and us in relation to your access to, and use of, our Site and our Services. In accessing or using our Services, you acknowledge that you have read, understood and agree to be bound by these Terms. If you do not accept these Terms, you must refrain from accessing or using our Site and our Services. By completing the registration process set out on the Site or by otherwise using our Services (which includes this version and any other update, feature or future version of the Services that we may provide) you agree to the following Terms, so you should read these Terms carefully.

### 1. Definitions

In these Terms and Conditions, the following terms shall have the following meanings:

“Upstream”: FUJIFILM Upstream Solutions Pty Ltd is a fully owned entity of Fujifilm Business Innovation Australia Pty Ltd having its registered office at Level 5, 8 Khartoum Rd, Macquarie Park, NSW, ABN (35 006 572 694), (hereinafter also referred to as “we”, “us” or “our”).

“Company”: any legal entity that purchases or wishes to purchase the Services from Upstream or an Authorised Upstream VMC Reseller.

“End User”: any registered natural person who works for the Company and who has been granted the authorisation to use the Service (as defined herein) on behalf of the Company.

“Administrator User”: any person appointed to manage the Company’s account. An Administrator User is a special class of End User which has specific administrator functionalities at their disposal; they can create other End Users, define their rights and modify settings. Each Company must have at least one Administrator User but may have more.

“Authorised VMC Reseller” means an entity that has been engaged by Upstream under a written agreement as a reseller of the Services.

“Service”: means all services offered by Upstream through the Site, including without limitation any mobile applications and the web application provided by Upstream in the form of Software-as-a-Service (SaaS), exclusively “Visitor Management”, and the underlying servers and software used to provide such application. The application is available online through our website at [www.visitormanagercentral.com.au](http://www.visitormanagercentral.com.au) (“Site”). The Service is further described in paragraph 3.

“Software Terms”: means the Upstream Software Terms available at <https://upstream.com.au/product-software-terms/>.

“Agreement”: means these Terms (and any variation to these Terms), together with Software Licence and Support Services Agreement (“SLSSA”) and all additional policies that are incorporated therein by reference, including without limitation the Privacy Policy (available at [www.upstream.com.au/privacy-policy](http://www.upstream.com.au/privacy-policy)) and the Cookie Statement (available at [www.vmchub.com.au/cookies](http://www.vmchub.com.au/cookies)). If You are signing up for VMC through the Site and not through the SLSSA, the “Agreement” will mean these Terms (and any variation to these Terms), together with the Software Terms and all additional policies that are incorporated therein by reference, including without limitation the Privacy Policy (available at [www.upstream.com.au/privacy-policy](http://www.upstream.com.au/privacy-policy)) and the Cookie Statement (available at [www.vmchub.com.au/cookies](http://www.vmchub.com.au/cookies)).

“you” or “your”: means any Company or End User, as the context requires, and any other person who otherwise accesses or uses the Site or the Services.

## 2. Binding Agreement

### 2.1 Acceptance of Terms

Upstream provides its Service subject to your acceptance of the Agreement. We advise and expect you to take careful notice of all the legal documents it includes, and all additional information that may accompany.

By registering for and/or using the Service in any manner (whether as a Company or End User), including but not limited to visiting or browsing the Site, you acknowledge that you have read, understood and agree to be bound by this Agreement. As an End User or Administrator User creating the Company account for the first time, you also warrant that you have the authority to bind the Company or any other legal entity you represent to this Agreement. If you do not have such

authority, or do not agree to all of the terms of this Agreement, you must not accept it and must not use the Service.

If you register for a free trial of our Service, this Agreement will also govern that free trial.

## **2.2 Modifications of Terms**

Upstream reserves the right to unilaterally vary or amend the Agreement from time to time, at its sole and absolute discretion. Any revision will take effect upon posting of the updated terms on the Site (or if specified in the amendment, with effect from the date specified therein).

You understand and agree that your continued use of the Service, or maintenance of a registration for the Service, following the posting of any changes to the Agreement constitutes acceptance of those changes. It is your responsibility to check the Agreement regularly for changes.

If you do not agree to the changes, you should immediately stop using the Service and cancel your registration.

We will inform you of any modifications of the Agreement we deem (in our absolute discretion) substantial enough by using website notice, email or any other form of communication. You consent to us communicating with you for that purpose.

## **2.3 Entire Agreement**

This Agreement, together with our Privacy Policy and our Cookie Statement, constitutes the entire agreement between you and Upstream relating to your use of the Site and the Service, superseding any prior oral or written agreements between you and Upstream regarding the subject matter herein.

This Agreement may only be varied or amended: (1) in the manner expressed in paragraph 2.2 or (2) by an agreement in writing signed by Upstream and the Company or End User (as appropriate) and expressed to be a variation or amendment of this Agreement.

## **2.4 Severability**

If any provision of this Agreement is held to be unlawful, invalid or otherwise unenforceable for any reason whatsoever, it shall be read down so as to avoid that unlawfulness, invalidity or unenforceability and if it cannot be read down then it shall be deemed severed from the Agreement and shall not affect the validity, legality and enforceability of the remaining provisions of this Agreement.

A provision of this Agreement must not be construed to the disadvantage of Upstream because Upstream was responsible for including that provision and/or that provision benefits Upstream.

### **3. Provision of the Service**

#### **3.1 Description of the Service**

Subject to your payment of the fees in accordance with paragraph 7 or the SLSSA and you otherwise complying with this Agreement, Upstream grants you a non-transferable and non-exclusive license to use the Service subject to the terms and conditions of this Agreement. The Service may include, without limitation:

- The use of the latest version of our application (including most recent upgrades)
- Access to our customer service process as advertised on our website from time to time;
- Hosting and maintenance of the Service as a cloud software solution (and the reasonable continuation of that hosting and maintenance) (as with any online service, we cannot and do not guarantee 100% uptime, however, we will take reasonable steps and endeavour to use industry best practice to provide uninterrupted access to the Service);
- The possibility of additional services, at an additional cost, to be provided pursuant to a separate written agreement.
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#### **3.2 Registration Process**

If you are signing up for the Service using our website, we may require you to register your Company and any of your End Users, employees, agents and representatives. Any Administrator User who registers your Company must have the legal capacity to enter into binding agreements on your Company's behalf. If you are on a free trial and you upgrade your free trial to a paid subscription, you are required to provide the Company's billing information such as name, credit card number and billing address, and to select a payment frequency.

Upon your account registration, you agree to provide accurate, current and complete information as has been requested during the registration-process, and to reasonably keep this information up-to-date.

We have the right to suspend or terminate your account and to refuse any and/or all current or future use of the Service (or any part thereof), if any information you provide is untrue, inaccurate, out-dated or incomplete. Any personal information you

provide in the registration form will be collected in accordance with, and for the express purposes set out in, our Privacy Policy. As with any online service, we cannot and do not guarantee absolute data security. However, we will take reasonable steps and endeavour to use industry best practice to secure data.

We may allow you to register and log-in, using only an email address and a password for authentication, and at times two factor authentication (2FA) or third party single sign on (SSO). You must ensure the confidentiality of your account, including the confidentiality of your log-in data. You are fully responsible for all activities that occur under your account. You agree to immediately notify us of any breach of security or unauthorised use of your account, and commit to take all appropriate measures to prevent unauthorised access or use (including, without limiting, ensuring that you exit from your account at the end of each session and taking measures to secure your log-in data).

### **3.3 Free Trial Period**

Upstream may offer interested new Companies a one-off trial period, in order to experience the features and functionality of our software. This trial period is free of charge for the period described on the Site.

Our trials may specify that a participating Company may access the trial with respect to one or more of the Company's offices (as determined by us in our sole discretion) (Sites). If this is the case, a participating Company may only access any such trial with respect to a Site once. Where a Company renews membership to VMC with respect to a Site, or the trial otherwise ends for any reason, that Site will not be eligible for another free trial. If we discover that a Company has multiple free trial accounts for one of its Sites, we reserve the right to restrict or terminate any one or more of such accounts of our choice, in our sole discretion. Unless we determine otherwise in our absolute discretion, such termination will involve the deletion of any or all data associated with that account.

The free trial is available with access to certain functionalities and support, but does not include access to integrations which are advanced functionality available to our Business and Education customers. During any free trial, you are authorised to access and use the Services solely to the extent allowed by Upstream. You acknowledge and agree that these Terms are applicable and binding upon you during any trial period. To the maximum extent permitted by law, Upstream does not make any binding representations, warranties, commitments or obligations in connection with the Services during any free trial period. The Services are provided "as is" and "as available" and, to the maximum extent permitted by law, the assurances regarding uptime and privacy in paragraph 3.1 and the entirety of paragraph 4 do not apply with respect to any free trial.

The trial period starts from the creation of a trial account, which is indicated by an approval sent by us to the e-mail address provided by you. The trial period is valid for the period described on the Site unless your use of the Service is terminated earlier in accordance with these Terms. As soon as the trial period expires or is

otherwise terminated, if you have not upgraded the account to a paid subscription then we may terminate the account and your access to the Services at any time in our absolute discretion, which may involve the deletion of any or all data associated with that account.

Upstream has the right to vary or modify the conditions of the free trial or to discontinue it entirely at any time, without prior notice, including, but not limited to, when we believe you apply for a free trial not to make any purchasing decision, but to engage instead in industrial espionage and/or subversive activities. You acknowledge and agree that by continuing to access the Services after any such variation or modification, you accept such updated terms and conditions, and that if you do not accept such updated terms and conditions, you must immediately cease using the Services with respect to that free trial.

## **4. Quality of service requirements**

We will endeavour to offer you a great Quality of Service (QoS), including with respect to technical specifications that specify the Software's features such as availability, performance, security and serviceability. Upstream represents and warrants to the Company that (i) it has the experience and ability to perform the Services in accordance with this Agreement; and (ii) it will perform the said Services in a professional, competent and timely manner, consistent with industry standards and with these Terms.

### **4.1 Availability and Good Performance**

We are aware that good software requires fast response times, trustworthy functionalities and excellent reliability. While we have taken reasonable technical, non-technical, organisational and juridical measures in order to provide you with a high level of availability and performance, we cannot and do not provide any guarantees with respect to our Services to the maximum extent permitted by law, including without limitation regarding the availability, performance, timeliness, security or error-free character of our Services. We are not responsible for any external factors, such as the proper functioning of the Internet. We do promise that all significant defaults, defects and errors in the operation or the functionality of the Service will be corrected within a reasonable period if they arise.

Without limiting the preceding paragraph, Upstream will use commercially reasonable efforts, being no less than accepted industrial standards, to make its Service available to you with a monthly uptime percentage of at least 99.0% during any monthly billing cycle (the "Service Commitment").

The time that our Service is not available qualifies as Downtime. Downtime does not include (i) scheduled downtime (for maintenance and upgrades, which are notified in advance to Administrator Users), (ii) unavailability of the Service due to factors outside our control, (iii) lack of access that is due to your improper use of the Service or due to our lawful termination of your access to the Service, and (iv) unavailability of the Service that results from you or third party services, hardware,

software, or network, including but not limited to issues resulting from inadequate bandwidth.

In the event we fail to meet our Service Commitment in a given calendar month, you will be eligible to receive Service Credits on future billing cycles. Such Service Credits shall be your sole and exclusive remedy with respect to such failure to meet the Service Commitment.

The claim for Service Credits submitted to Upstream must include (i) a detailed description of the incident; (ii) information regarding the duration of the Downtime; and (iii) descriptions of your attempts to resolve the incident at the time of occurrence. We must receive the claim and all required information by the end of the second calendar month following the month in which the incident occurred.

We will evaluate all information reasonably available to us and make a good faith judgment in our discretion on whether Service Credits are owed. If we determine that Service Credits are owed to you, we will issue them on the next billing period. Service Credits may not be paid in cash or refunded to credit cards. Service Credits are calculated as a percentage of the total charges paid by you (excluding one-time payments) for the monthly billing cycle in which the Downtime occurred, which will not exceed 10%.

Our Services are only fully functional and effective if you have the necessary hardware, software and telecommunication facilities available, which we may or may not be responsible for providing. It is your sole responsibility to take the necessary measures that enable the access to our Service. The equipment and software used must meet the system requirements, including as set out on the Site.

## 4.2 Security

Upstream endeavours to maintain the safe nature of its application and we take security very seriously. We undertake reasonable measures to safeguard the security and safety of our site in accordance with industry best practice. We recognise, for example, that the content provided by you on the Service is valuable, and therefore take reasonable measures with regard to its protection against accidental or unlawful destruction or accidental loss, modification, unauthorized disclosure and access in accordance with industry best practice. Upstream endeavours to systematically create in real time a backup of the data provided by you and stored in our applications on another server in the same data centre, and moreover creates a full database backup on a server located in another location in accordance with our Privacy Policy, available at [www.upstream.com.au/privacy](http://www.upstream.com.au/privacy). Upstream may determine in its sole discretion the frequency of such backups. It remains your responsibility to always provide your own backup of the content you have provided. To the maximum extent permitted by law, we are not responsible or liable in any way for any loss of your content or data.

Without limitation, we cannot ensure or warrant the security of the content that you provide on the Service because we depend on the use of Internet, on which the

transmission of data can never be perfectly secured. You can, however, be assured that we truly care about the security of your content provided in using our Service and that we will use reasonable efforts to achieve such aim.

Notwithstanding the above, you are solely responsible for maintaining and protecting your equipment, software, telecommunications and Internet connection against viruses, computer crime and illegal use by third parties.

#### **4.3 Servicability**

##### **a) Maintenance and Upgrades**

We may limit at any time the access or use of the Service to the extent necessary for maintenance or to perform modifications or enhancements to the Services or our applications. We will endeavour to: (i) schedule such maintenance and upgrades during weekends and (ii) inform you at least 24 hours in advance of such maintenance and upgrades, unless the update is an urgent security, availability or performance update, or we determine this is impossible or not useful. You acknowledge that we are not liable for any loss, costs, damages or expenses that you may incur as a result of us carrying out such maintenance or updates, and that maintenance gives no grounds for compensation on behalf of Upstream.

##### **b) Support**

Upstream endeavours to provide you with reasonable support in connection with your use of our Services. We strive to provide clear answers to any relevant questions or comments so as to contribute to the solution of any problem you may have regarding the Services, whatever its nature. Questions and comments should always be made in writing via email at [shm-fbau-vmc.upstream@fujifilm.com](mailto:shm-fbau-vmc.upstream@fujifilm.com). We will endeavour to answer properly submitted questions in relation to such a problem as soon as possible and where reasonable to do so within one (1) business day (although this may not always be possible). On some pricing plans, we may also offer support via phone.

### **5. Acceptable use**

#### **5.1 General Statement**

We would like to provide a safe and sound application, but we need your help to succeed in this respect. We rely on you to help us to maintain the Service's safety and security accordingly, you acknowledge that you must only use the Services for proper purposes, in accordance with any applicable laws and regulations, and in good faith.

If we determine in our absolute discretion that you (or, if applicable, an End User accessing the Services in connection with your account if you are a Company) are not acting for a proper purpose or have otherwise breached this Agreement, you acknowledge that we have the right to terminate your account and your access to the Services (or, if applicable, the account of the relevant End User, as the case may be).

## **5.2 Illegal Activity**

You shall first and foremost use and access the Service only in compliance with the Agreement and with all applicable laws and regulations. You also agree to provide us with notice and information on any actual or suspected illegal activity by any person in connection with the Site or the Services that you become aware of.

## **5.3 Security**

You must refrain from any action that may jeopardise or otherwise interfere with the safety and/or security of the Site and the Services. This includes, but is not limited to, disturbing the normal operations of the Site or the Services, including by distributing, downloading, uploading or transmitting any material that contains viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious program that may infringe the Site or the Services and the interests of Upstream and/or any users of the Site or the Services. You must also refrain from uploading, distributing or transmitting any content that may burden or disturb our Sites' and or Services' infrastructure and proper functioning. You must not cause an unreasonable amount of requests to be made to the Site (whether or not as part of a DoS or DDoS attack) and you must not attempt to access portions of the Site which you are not authorised to access, including without limitation by manually inputting multiple passwords, inputting malformed inputs to the Site, attempting to exploit any unpatched or undiscovered vulnerability in the Site, using a dictionary attack or using brute-force code.

## **5.4 Inappropriate Content**

You must refrain from adding content that can be described as inappropriate regarding the aims and intent of the Service, as determined by us. Upstream may in its absolute discretion choose to notify users of inappropriate content and require that the user removes such content in as directed by Upstream (without limitation to any right we may have to terminate their account). How we deal with inappropriate content is further discussed in paragraph 6.

## **5.5 Unsolicited Messages**

You must not send unsolicited and/or commercial messages to another user of the Services, such as junk mail, spamming and chain letters, and you must not send threatening messages and other disturbing messages to other user of the Services.

# **6. Content management**

## **6.1 Inappropriate Content**

You are always solely responsible with regard to any and all content that you may add or distribute via the Site or the Services, as well as any and all content that you otherwise provide to us. You will not create, transmit, display or make otherwise available any content that is unlawful, harmful, offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, invasive of another's privacy, or hateful (including without limitation viruses, worms and any other destructive codes). In the event that you do so, we reserve the absolute right to delete that content and/or provide that content to other persons including, without limiting, law enforcement authorities.

Any and all content provided by you in connection with the Site or the Services must be appropriate with regards to the aim and intentions of the Service. Upstream preserves the absolute discretion when establishing whether content falls within these boundaries.

Upstream does not purport to be the content police; our duty in the process of information dissemination is simply to act as conduit between interested parties. Upstream does not perform any prior supervision on new content that is added to the Site, the Services or our applications, but we may take any action we consider necessary regarding inappropriate content, including upon receiving of a well-reasoned and founded claim. Our obligations to remove or block the usage of any information in accordance with any applicable laws remain unaffected. If you are concerned that any content on the Site or Services is inappropriate, you may contact us at [shm-fbau-vmc.upstream@fujifilm.com](mailto:shm-fbau-vmc.upstream@fujifilm.com).

## **6.2 Hyperlinks**

Our Site and Services may contain direct or indirect links to third party websites and/or electronic communication portals, on which we do not exercise any technical control or any control on the content. User-generated content may, for example, include such hyperlinks.

Such a reference being made on our Site or Services does not mean that we explicitly or implicitly agree with the content of those websites. Upstream does not guarantee or accept any liability for the accuracy, legality, completeness or quality of the content of external websites linked to on the Site or Services, or of other electronic communications portals that are not under the actual control of Upstream. If you click or otherwise follow any such link or reference, you do so at your own risk and in your sole responsibility. We are not liable for any damage resulting therefrom.

## **6.3 Downloads**

You acknowledge that users of the Services may be able to upload content on the Site, which can then be downloaded by other users. Upstream cannot be held accountable for and excludes all liability in connection with the consequences of such actions by any user of the Services. You understand and agree that every download from our Site or Services is at your own risk and that any and all resulting damages

(including without limitation from loss of data or damage to computer systems) are your sole responsibility.

## 7. Fees and payments

This section is only applicable if you subscribe to the Services through the Site. All Services supplied through the SLSSA will be governed by the SLSSA fees and payment terms.

All fees indicated on the Site are stated in AU dollars (AUD) with the option to display and pay for services in other currencies unless stated otherwise, and do not include any applicable taxes, duties, levies and currency exchange settlements, unless stated otherwise. Except where you have purchased the Service through an Authorised Upstream Reseller, You agree to pay the applicable subscription fee in the manner set out on the Site and any applicable tax or fee that may accrue in relation to all use of the Service accessed through your account, including all fees resulting from unauthorised use.

You acknowledge that we may, with respect to any subscription plans sold directly by us, determine limits and restrictions on the usage of the Services (including without limitation in terms of both available functionalities and the number of visitors or tickets per month). If you exceed any such usage limitations or restrictions provided in the selected plan, we may charge you extra for such usage as indicated on the pricing page of the Site. This charge will occur at the end of the billing period.

Depending on the subscription plan selected by you, the billing period may be either be every month, every 12 months or every 24 months as set out on the Site with respect to that subscription plan (or as otherwise agreed by us in writing). You may have the option to pay monthly or pay for one year or two years up front. You may also agree different billing arrangements with the Authorised Upstream VMC Reseller from whom you purchased the Service.

In case of 12, 24 or 36 month up front payments, Upstream may bill you for the subscription Services in advance, from the date you purchased the subscription, at the rate corresponding to the subscription plan you have chosen. If you pre-pay for one, two or three years and you upgrade your plan during that time, then we may make an appropriate adjustment to the Service fee payable by you (as determined by us) on a pro-rata basis until the next anniversary date of the subscription. Your subscription fee for the period after the next subscription anniversary date will be adapted to take into account the additional option(s) and/or plan upgrade. Be aware that your account will not be credited if you downgrade your plan during any pre-paid subscription.

In case of monthly payment, Upstream bills your subscription at the end of the month so that it can include additional options and/or plan upgrades. Automatic card payment is accepted in case of monthly or annual payment.

Upstream reserves the right to adapt the fees published on its Site. Any price change will apply retroactively to existing subscriptions with reasonable notice to you.

If such change will result in lower prices payable by you or otherwise works towards your advantage (but not in case the lower prices result from higher government levies or taxes), you may request your subscription to be adapted as from the date of your request by sending an e-mail to [shm-fbau-vmc.upstream@fujifilm.com](mailto:shm-fbau-vmc.upstream@fujifilm.com). We may accept or reject any such request in our absolute discretion. In no instance will such a request lead to any reimbursement of any part of a paid subscription. It might, however, lead to an extension of the subscription if we determine so.

Provision of the Service is conditional upon the payment by the Company (or the Authorised Upstream VMC Reseller on behalf of the Company) of all fees and charges associated with the Service in accordance with this Agreement. Failure to make a payment when due will automatically lead to a suspension of the account for any amount of time that we may determine in our discretion. Following such suspension, Upstream has the absolute right to terminate that account and may delete any data associated with it. Any dispute regarding an invoice must be lodged with Upstream in writing within fourteen (14) days of receipt of the invoice. You acknowledge that the foregoing terms take precedence over any agreement you might have with an Authorised VMC Reseller.

Payments must be made to Upstream via credit card or wire transfer depending on plan and/or duration selected. Wire transfer invoices are due for payment within thirty (30) days from invoice date. Any amount that has been left unpaid at the due date of payment will be charged, automatically and without prior notice of default, with interest of 10% per year, from the due date up to the date of full payment (such interest accruing daily). Moreover, you will owe a compensation for loss on a flat-rate basis of 10%, with a fixed minimum of \$50AUD. We may also charge you the entirety of any expenses we reasonably incur in connection with any debt collection or enforcement efforts.

Upstream conveniently accepts various forms of payment. Any major credit card, debit card or alternate form of payment that is set out as an option on the Site may be used. You will be asked to provide a payment method at the time you upgrade your free trial to a paid subscription of the Service. You represent that you are the authorised user of any form of payment which you elect to use. Payments are processed through the secured facilitator, PIN Payments. Online payments are executed via a closed security system (SSL), through which your payment details are always encrypted when they are sent via the Internet. The risk of loss or theft of your identity or credit card information is hereby reduced, however we cannot guarantee that it will not occur. Upstream takes reasonable steps to store your identity and transaction information over a period of time in a secure, encrypted database. While Upstream believes appropriate precautions have been taken, to the maximum extent permitted by law Upstream excludes all liability for any identity theft or financial theft that may occur.

## **8. Confidentiality**

Confidential information means all information, of whatever nature, that may be disclosed or revealed in the execution of this Agreement, and that is marked or identified or can be reasonably considered as confidential information. Confidential information does not, however, include information which (a) is or becomes generally available to the public other than as a result of a disclosure by the receiving party or its representatives in breach of any confidentiality obligations, (b) was available to the receiving party on a non-confidential basis prior to its disclosure by the disclosing party or its representatives, or (c) becomes available to the receiving party on a non-confidential basis from a person other than the disclosing party or its representatives.

Each party agrees to safeguard and hold as strictly confidential all confidential information of the other party, and shall only use the information for purposes as authorised by this Agreement or as otherwise required by law. The receiving party may only disclose confidential information to its directors, officers, employees, agents, representatives or advisors who have a "need to know" such confidential information for the purpose of this Agreement, and only for that purpose. The confidential nature of the information must be made clear to and respected by these other parties.

You acknowledge that we may share information regarding your account with any Authorised VMC Reseller from whom you purchased the Service.

All confidential information, including the copies made thereof, is the sole property of the disclosing party and shall be promptly returned to the disclosing party or destroyed (as directed by the disclosing party) upon written request by the disclosing party.

## **9. Intellectual property**

The Site, the Services, and the "Visitor Management Central" applications operated by Upstream are protected by intellectual property rights. These intellectual property rights include, without limitation, copyrights, trademark rights, design and model rights and/or any other intellectual property rights (whether registered or unregistered), including technical and/or commercial know-how, methods and concepts, whether or not patentable under the laws of Australia or anywhere else in the world (Intellectual Property Rights).

All Intellectual Property Rights and derived rights in and to the Site, the Services and any applications operated by us (including any updates, enhancements and new features) are the property of Upstream and our licensors (as the case may be) and continue to be retained by Upstream. The use of the Service does not imply a transfer of any Intellectual Property Rights towards you. You must be aware at all time of these Intellectual Property Rights and must refrain from any violations or infringements of such Intellectual Property Rights.

You agree not to reproduce, modify, create derivative works from, display, perform, publish, distribute, disseminate, broadcast, commercially exploit, communicate,

circulate, or in any way transfer or assign any Intellectual Property Rights in the Site, the Services, or any applications operated by us, or any part thereof, to any third party, without the express prior written consent of Upstream in its absolute discretion. You further agree that you will not disassemble, decompile, reverse engineer, create derivative works from or otherwise modify the Site, the Services, or any applications operated by us.

Subject to and on the terms of this Agreement, we grant you a limited, personal, revocable, non-assignable and non-exclusive licence to use our Intellectual Property Rights in and to the Site, the Services and the applications operated by us solely to enable you to enjoy their benefits as intended by us under this Agreement.

## 10. Data ownership

You shall retain ownership of your content, data and information provided by you in the context of using the Service.

Without limiting the licence to your content granted by you below, and unless specifically permitted by you (whether in these Terms, in our Privacy Policy or otherwise), your use of the Service does not grant us the licence to use, reproduce, adapt, modify, publish or distribute this content for our commercial, marketing or any similar purpose.

However, nothing in these Terms shall restrict our right to compile and use aggregated usage data and statistics, or to disclose these aggregated statistics, as long as these do not describe or identify any individual user.

You further grant us a worldwide, royalty-free, sub-licensable, perpetual licence to (i) use any content, data and information you provide in connection with the Service for purposes of providing the Service, to otherwise perform this Agreement; (ii) to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by you and other users; and (iii) to collect, store, use and disclose any personal information contained in any content, data and information you provide us in accordance with our Privacy Policy available at [www.upstream.com.au/privacy-policy](http://www.upstream.com.au/privacy-policy) (including, but not limited to, with respect to direct marketing by us).

## 11. Liabilities

By accessing and using the Site or the Services, you assume all risks associated with such access and use. You agree not to hold us responsible for things other users post or do.

As there are many factors beyond our control that may affect the performance or compatibility of the Site and the Services with certain software or hardware, we cannot promise that your use of the Site or the Services will be uninterrupted or error or defect free or that errors or defects in the Site or the Services will be corrected. While we use reasonable measures to ensure the accuracy and currency

of data and information on the Site or the Services, we are not responsible for the data and information supplied to or by users or third parties. We make no guarantee that the data on the Site or the Services is accurate or current.

To the maximum extent permitted by law, we (and our directors, employees and agents) do not accept any liability for, and you agree to release us (and our directors, employees and agents) from any claim in relation to any loss, howsoever caused, suffered or incurred by you arising from your use of the Site or the Services (including without limitation any consequential losses or damages) and any liability we owe is limited, to the maximum extent permitted under law, to the amount you paid to the Services, or (if we choose) us providing the relevant Service again. To the extent allowed at law, in no event will we be liable for any direct, indirect, incidental, special, exemplary, consequential, or other damages (including, but not limited to, loss of profits, business interruption, loss of program or data), without regard to the form of action, whether under legislation, in contract, tort, negligence, strict liability, or otherwise, arising out of or in connection with the Site or the Services, or any content, service, site or link displayed on or accessed through the Site or the Services.

## **12. Term and termination**

### **12.1 Term and Duration**

The Agreement takes effect from the date of its acceptance, materialised by you accessing or otherwise using the Service (including by the completing the registration process) and will continue until the end of the chosen subscription plan.

### **12.2 Suspension and Termination**

#### **a) Suspension**

We have the right to suspend your access to the Service, and the associated data, if we become aware or reasonably suspect that you are in breach of this Agreement. There is no time limit between the defective behaviour and the suspension. This right of suspension does not require any or comprehensive reasoning and, in extreme circumstances, can be done without prior notification. We may in our absolute discretion inform you of our reasons for doing so after the implementation of the suspension (but we may not do so unless obliged by law). You must continue to comply with your obligations under this Agreement during any such suspension. If you feel you have been unjustifiably suspended, you may contact us at [shm-fbau-vmc.upstream@fujifilm.com](mailto:shm-fbau-vmc.upstream@fujifilm.com). Fees may continue to accrue during a suspension, and we may charge you a reinstatement fee following any suspension of your Service. The reinstatement fee must be paid before the Service can be restored.

#### **b) Termination or cancellation for convenience**

Upstream may terminate this Agreement with you and your access to the Services with or without cause at any time by giving you (or any Administrative User with respect to your account) 30 calendar days' written notice (which notice may be

given by email). If Upstream exercises this right: (i) you must pay Upstream all outstanding subscription fees (including with respect to the month in which the Agreement is terminated) and any other amounts payable by you that have accrued prior to termination; and (ii) you will not be liable to pay further subscription fees with respect to the terminated account.

c) Termination for breach

Either party may at any time temporarily suspend or immediately terminate the execution of this Agreement (and your access to the Services) if:

- (i) that party is faced with a breach to one or more essential obligations of this Agreement that is attributable to the other party; or
- (ii) the other party becomes or is declared insolvent in the meaning of the applicable law, becomes the subject of an involuntary or voluntary bankruptcy or similar proceeding, or assigns all or substantially all of its assets for the benefit of creditors.

A prior written notification (which may be via registered letter) is required for a party to suspend or terminate the Agreement under this clause, which grants the other party a reasonable timeframe to comply with its obligations and remedy the breach if this is still useful (except where, Upstream must suspend or terminate immediately due to the nature of the breach). The termination shall be without prejudice to the other rights of the party to terminate the Agreement, including the right to claim compensation for the damages suffered as a result of breach of any obligations.

No refunds or partly refunds will be given in respect of any fees paid to us in advance, unless we are in material breach of the Agreement as determined by a court of competent jurisdiction. In that case, the Company may be entitled to receive a refund of any part of the fees paid to us in respect of the period following the date of termination, calculated pro-rata on a daily basis.

### **12.3 Termination Consequences**

Your account may be deactivated upon the termination or suspension of this Agreement. Deactivation means that Service will be unavailable in whole or in part and that you therefore may not have access to your data. Deactivation does not mean that the account, and the associated content, will be immediately and irrevocably removed. Upstream may store such data for at least sixty (60) calendar days (or such other timeframe that Upstream determines) following the day of deactivation (subject to the other terms of this Agreement).

## **13. Privacy**

When you use the Site and the Services, you may send personal information to us. We will use, store and handle this information in accordance with the requirements of the Privacy Act 1988 (Cth) that apply to us and our Privacy Policy which may be accessed at [www.upstream.com.au/privacy-policy](http://www.upstream.com.au/privacy-policy). You acknowledge and agree that our Privacy Policy applies to you and your use of our Site and our Services at all times.

## **14. Indemnity**

You agree to indemnify, and keep indemnified, Upstream against all forms of liability, actions, proceedings, demands, costs, charges and expenses which Upstream may incur or be subject to or suffer as a result of your use of the Services, including without limitation with respect to:

- a) any breach of this Agreement by you;
- b) any breach of any rights of a third party by you;
- c) any breach of any applicable law by you; and
- d) any activity which you engage in on or through the Site or the Services.

## **15. Final provisions**

This Agreement is exclusively governed by the laws of the New South Wales and the Commonwealth of Australia.

You and we submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any action brought in the Courts of the Commonwealth of Australia must be brought in their Sydney, New South Wales registry.

You and we agree to negotiate in good faith in order to resolve any dispute for a period of 60 days before initiating any court proceeding. That period commences upon the other party receiving of written notification of that dispute.

In this Agreement, unless the contrary intention appears in any part, clause headings have been inserted for convenience only and will not be taken into account in interpreting the Agreement; words importing the singular will include the plural and vice versa; words importing natural persons will include firms and corporate bodies or other legal persons and vice versa; reference to a party to this Agreement includes reference to that party's successors and assigns; and references to currency are references to Australian dollars.

## **Contact Us**

If you have any questions or comments about our Upstream VMC terms of service please contact [shm-fbau-vmc.upstream@fujifilm.com](mailto:shm-fbau-vmc.upstream@fujifilm.com).