

## UpAhead Software Agreement

This agreement ("Agreement") is entered into (Date: [REDACTED]), between the (City/County Name: Town of Apple Valley), at (City/County Address: [REDACTED]) ("Customer"), and UpAhead, LLC, a Utah limited liability company located at 401 N 360 W Vineyard, Utah 84059 ("Provider"). Customer and Provider may each be referred to as a "Party" and may be collectively referred to as the "Parties."

### 1. Term of Agreement; Termination

1.1 Implementation Date and Initial Term. This Agreement shall commence on August 30<sup>th</sup>, 2024 (the "Implementation Date") and continue for a period of one (1) year ("Initial Term"), unless earlier terminated as provided herein. Provider may delay or "push back" the Implementation Date if needed; provided that if Provider delays the Implementation Date more than three months from the date stated above, Customer in its sole discretion may immediately cancel this Agreement without any further obligation or liability under this Agreement and Provider shall refund any amounts previously paid to Provider.

1.2 Automatic Renewal Unless Terminated. Upon expiration of the Initial Term, this Agreement shall automatically renew for an additional one (1) year term ("Renewal Term") unless either Party provides written notice of termination to the other Party at least sixty (60) days prior to the expiration of the then-current term.

1.3 Termination. Prior to expiration of the Initial Term or the Renewal Term, either Party may terminate this Agreement by providing written notice of termination to the other Party at least sixty (60) days prior to the expiration of the Initial Term or the Renewal Term, whichever applies. During the Renewal Term, Customer may terminate this Agreement at any time, without cause, by providing written notice of termination to Provider at least sixty (60) days' notice of termination.

1.4. Termination for Cause. Customer may terminate this Agreement for cause by providing seven (7) days' prior written notice in the event of any default by Provider or if Provider fails to comply with any industry standards and customary practices, terms and conditions, of this Agreement. Unsatisfactory performance, as judged by industry standards and customary practices, and failure to provide Customer, upon request, with adequate assurances of future performance, shall all be causes allowing Customer to terminate this Agreement for cause. In the event of termination for cause, Customer shall not be liable to Provider for any further or additional payments under this Agreement, and Provider shall be liable to Customer for any and all damages sustained by reason of the default which gave rise to the termination.

### 2. Scope of Services

2.1 Services. Provider agrees to provide the following services ("Services") to Customer:

- Local Phone Number
- Provision of 50,000 text messages per year
- Text message auto-responses (responses are included in text-message count per year)
- Group Text Messaging
- Design and provision of a PDF flier
- Implementation of a QR code to SMS service
- Website widget
- Auto-responses (to be implemented within three months of the implementation date, otherwise, the Customer shall receive extended free time of contract for the duration of the extension)

2.2 Additional Services. Any additional services beyond the scope outlined in this Agreement may be provided by Provider if agreed to in writing by both Parties, and may be subject to additional fees.

### 3. Pricing and Payment Terms

3.1 Pricing. The pricing for the Services shall be as follows:

- Year 1: \$ 2,388.00 (\$199.00 per month)

3.2 Price Guarantee. Provider guarantees that the prices for the Services set forth in Paragraph 3.1 will remain unchanged for the Initial Term. During the Renewal Term, Provider may, but is not required to, adjust prices set forth in Paragraph 3.1 annually, provided that no such adjustment exceeds three percent (3%) per year. Provider agrees to provide Customer at least thirty (30) days' written notice before any proposed price adjustment, detailing the new pricing and its effective date. The scope of service and all terms and conditions in this Agreement will remain the same. In exceptional circumstances, the pricing under this Agreement may be revised if the pricing change is reasonable and justifiable and Provider and Customer agree to the pricing change in writing.

3.3 Implementation Fee. An implementation fee of \$599.00 will be charged and must be paid in full before Implementation Date.

3.4 Payments. Customer agrees to pay the price set forth under Paragraph 3.1 on a monthly basis in advance; provided that Customer has the option to pay the price set forth under Paragraph 3.1 yearly in advance. The initial monthly or yearly payment must be paid before the Implementation Date unless otherwise agreed upon by both Parties.

3.5 Invoices. Provider will submit invoices to Customer at least 7 (days) days prior to the due date for payment.

3.6 IRS Form W-9. Customer agrees to provide a current IRS Form W-9 to Provider. Customer agrees and acknowledges that copies of the IRS Form W-9 can be used by and/or provided to Twilio and/or other carriers for local telephone registration purposes.

#### 4. Additional Terms

4.1 Website Widget. If the website widget is not placed on Customer's website within sixty (60) days of the Implementation Date, an additional fee of \$250.00 will be charged for Provider's team to complete the integration.

4.2 Telephone Number, Users, and Support. The package includes a local phone number, unlimited users, and unlimited support during the hours of 6am-5pm MST.

4.3 Text Messages Per Year. If Customer's text messages exceed the number of included messages set forth in Paragraph 2.1, the following charges, applied yearly, will be charged to Customer:

- 50,000 additional messages per year: \$300.00 per year

4.4 Software/Services Downtime Compensation Clause. Customer shall be entitled to an extension of this Agreement if: (a) Provider's text messaging services are interrupted, disrupted, and/or otherwise make the Services unavailable or unusable to Customer (the "Downtime"); and (b) the Downtime is not caused by a force majeure beyond Provider's control. The extension of this Agreement and Provider's Services will be equal to the duration of the Downtime at no additional charge or cost to Customer.

#### 5. Cancellation Policy

5.1 Cancellation Policy. If Customer cancels this Agreement prior to the expiration of the Initial Term, Customer will provide at least sixty (60) days' notice to Provider and pay the remaining amount due for the Initial Term (1 year).

#### 6. Contacts

6.1 Implementation Contacts. Customer agrees to provide two (2) contacts to Provider as Customer representatives to coordinate work during implementation of the Services. The contact information provided must include name, email, and a cell phone.

6.2 Billing Contact. Customer agrees to provide a contact for Provider's billing purposes, including name, email, and a cell phone.

6.3 Authorized Twilio Contact. Customer agrees that their signatory contact will represent the authorized Twilio contact necessary to proceed with phone number registration.

## **7. Warranty and Disclaimer**

Provider shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform all implementation of the services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Provider or by third-party providers, or because of other causes beyond Provider's reasonable control. Provider shall use reasonable efforts to provide advance notice of any scheduled service disruption in writing or by e-mail. Provider does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES, INCLUDING BUT NOT LIMITED TO IMPLEMENTATION OF THE SERVICES, ARE PROVIDED "AS IS" AND PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **8. Indemnification**

8.1 Provider's Indemnification. To the fullest extent permitted by law, Provider, its successors, assigns and guarantors, shall indemnify, defend, hold harmless Customer, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to damages for personal injury or personal property damage, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Provider relating to work or services under this Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Provider's and any subcontractor's employees.

8.2 Customer's Indemnification. To the fullest extent permitted by law, Customer, its successors, assigns and guarantors, shall indemnify, defend, hold harmless Provider, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to damages for personal injury or personal property damage, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Customer relating to work or services under this Agreement, including but not limited to, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable

and any injury or damages claimed by any of Customer's and any subcontractor's employees.

8.3 Insurance and Indemnification. Any insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

## **9. Limitation of Liability:**

In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, or punitive damages, including but not limited to lost profits or loss of data. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, PROVIDER AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE 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: (A) 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; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO PROVIDER FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10. Restrictions and Responsibilities**

10.1 Customer will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any software (except to the extent expressly permitted by Provider or authorized within the Services); use the Services or any software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

10.2 Texting Rights. Provider is not liable for any fines, or penalties resulting from text messages sent to non-consenting parties. By sending text-messages, the customer is confirming that all phone numbers messaged have given express consent to receive

information and promotional text-alerts from the government entity. Provider will not be held liable for any errors on this account.

## **11. Intellectual Property**

11.1 Intellectual Property Rights. All intellectual property rights in the Services, including but not limited to patents, copyrights, trademarks, trade secrets, and any other proprietary rights, shall remain the property of Provider.

## **12. Confidentiality; Proprietary Rights**

12.1 Confidentiality. Each Party understands that the other Party has disclosed or may disclose business, technical or financial information relating to the other Party's business (hereinafter the disclosing Party's "Proprietary Information"). Proprietary Information of Provider includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Provider to enable the provision of the Services. A Party that received the other Party's Proprietary Information agrees: (i) to take reasonable precautions to protect such Proprietary Information; and (ii) not to use (except in performance of the Services or as otherwise permitted under this Agreement) or divulge to any third person any such Proprietary Information. The Party that disclosed such Proprietary Information agrees that the foregoing shall not apply with respect to any information after five (5) years following the date of disclosure, nor to any information that the Party receiving such information can confirm: (a) was or becomes generally available to the public; or (b) was in its possession of or known by the receiving Party prior to receipt from the other Party; or (c) was rightfully disclosed to the receiving Party without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the disclosing Party; or (e) is required to be disclosed by law.

12.2 Provider's Use of Customer's Information. Notwithstanding anything to the contrary, Provider may 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's text messages and data derived therefrom), and Provider 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 Provider offerings; and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

## **13. Miscellaneous Provisions**

13.1 Conflicts of Interest. Customer may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating,

securing, drafting or creating the Agreement on behalf of Customer's departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from Customer is received by all other parties to the Agreement unless the notice specifies a later time (A.R.S. § 38-511).

13.2 Records and Audit Rights. Provider records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by Customer to substantiate charges and claims related to this Agreement shall be open to inspection and subject to audit and/or reproduction by Customer's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by Provider or any of Provider's payees pursuant to the execution of the Agreement. Customer's authorized representative shall be afforded access, at reasonable times and places, to all of the Provider's records and personnel pursuant to the provisions of this Agreement throughout the term of this Agreement and for a period of three years after last or final payment.

13.3 Taxes: Provider shall be solely responsible for any and all tax obligations which may result out of Provider's performance of this Agreement. Customer shall have no obligation to pay any amounts for taxes, of any type, incurred by the Provider. If Customer is tax-exempt, Customer must provide Provider proof of their tax-exempt status, within fifteen (15) days of contract signing, and this agreement will not be taxed.

13.4 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.

13.5 Non-Assignability. This Agreement is not assignable, transferable or sublicensable by Customer except with Provider's prior written consent. Provider may transfer and assign any of its rights and obligations under this Agreement without consent.

13.6. Entire Agreement. This Agreement 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 writing and signed by both Parties, except as otherwise provided herein.

13.7 No Joint Venture or Authority to Bind. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Provider in any respect whatsoever.

13.8 Attorney's Fees and Costs. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

13.9 Governing Law; Jurisdiction; Venue. This Agreement shall be governed and interpreted according to the laws of the State of Utah. Each party waives any right to object to or challenge the forum in state or local court.

13.10 Authority. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

13.11 Counterparts. This Agreement may be executed on multiple counterparts, each of which will be deemed an original, but taken together, will constitute one written agreement, and this Agreement shall be effective and binding when each Party has executed a counterpart hereof.

**14. Agreement Validity**

This agreement is valid if, and only if, completed by August 28, 2024.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**PROVIDER:**

UpAhead, LLC

Signature: \_\_\_\_\_

\_\_\_\_\_

Printed Name

Title

Date

**CUSTOMER:**

Name of City/County:

Town of Apple valley

Signature: \_\_\_\_\_

Mike Farrar

Printed Name

Mayor

Title

Date