



## Unifii End User Licence Agreement and Terms of Service for Products available on AWS Marketplace to AWS Account Holders.

Welcome to Unifii. These Terms of Service (including any documents or materials referred to in them) govern the relationship between you and Unifii. Please read these Terms of Service carefully.

*If you are based in New South Wales, you acknowledge that we have brought to your attention the following 'Key Clauses', which are particularly important in setting out your rights and responsibilities under these Terms of Service:*

*Acceptable Use and Suspension*

*Privacy*

*Infringement Claims*

*Representations and Warranties*

*Limited liability*

*Audit and inspection*

*By accepting these terms, you warrant that you are an authorised representative of the business or entity with the authority to bind the entity to this agreement, and that you agree to this agreement on the entity's behalf.*

### 1 AGREEMENT

- 1.1 These Terms of Service (**Terms**) set out certain terms that govern our relationship with our customers, including in relation to the provision of Services that we agree to provide.
- 1.2 By registering as a customer on our website, or through an authorised third-party marketplace, you accept these Terms, and they form a binding agreement between Unifii Pty Ltd (ABN 83 147 673 738) (**Unifii, we, our or us**) and the party specified in the registration (**you**) (**agreement**).
- 1.3 Additional terms may apply to a particular Order or to particular Services, and if so, they will be set out in the relevant Order. On acceptance of the Order, those terms are incorporated into and become part of this agreement (and prevail over these Terms to the extent of any inconsistency).
- 1.4 We may vary these Terms from time to time by providing you with at least 30 days advance notice. If you do not agree to the varied Terms, you may terminate the agreement by giving us written notice. The agreement will end on the date the varied Terms would have taken effect. We will not charge you an early termination fee, and we will not charge you any Fees for the period after the termination date.

### 2 TERM

- 2.1 This agreement commences on the date you register as a customer on our website, or via an authorised third-party marketplace, and continues until the expiry of your last Service, unless otherwise terminated in accordance with clause 15 (**Term**).
- 2.2 The term of an Order commences upon the date stated in that Order and continues for the period stated in that Order (**Order Term**).

### **3 THE SERVICES**

#### **Ordering and use**

- 3.1 You may order Services from us from time to time by placing an Order.
- 3.2 For each Order that we accept, subject to you paying the Fees in accordance with the applicable Order, we grant you a non-exclusive, non-transferable licence for the Order Term to access the Services and use the Documentation, in the Licensed Territory, and for the Authorised End Users, as set out in the applicable Order.
- 3.3 We will provide the Services in accordance with this agreement and with reasonable care and skill, but do not promise that the Services will be continuous or fault free.
- 3.4 We will not provide professional services under this agreement. You may submit a separate request to us for specific professional services, which would be subject to a separate written agreement if we agreed to provide them.

#### **Support and updates**

- 3.5 We will use reasonable endeavours to restore in a timely matter any loss of functionality in the Services that is causing a material degradation in the performance of the Services.
- 3.6 We will not be liable for any defect, failure or other deficiency in the Services or the operation of the Services to the extent caused by or contributed to by circumstances beyond our reasonable control, including a Force Majeure Event, use of the Services in conjunction with any equipment, configuration, network or environment exceeding or otherwise inconsistent with any specifications agreed between the parties, changes made to the hardware or software used by you (including changes made by third parties), API withdrawal, user error and vexatious users, online attacks, viruses and malware, and items that we could not have reasonably foreseen. If you ask us to rectify these issues, we may agree to enter into a separate professional services engagement to do so.
- 3.7 We may make available to you, at no additional charge, all improvements and additional features and functionality that we incorporate into our standard service offering for the Services.
- 3.8 We may make any modifications or updates to the Services, without your consent, provided that we will not remove any material features from or reduce the functionality of the Services to a material extent.

### **4 YOUR ACCOUNT**

- 4.1 You (or your end users as relevant) must create an account and specify a password in order to use certain services or features on the Services. To create an account, you (or your end users as relevant) must be at least 18 years old and you must provide accurate and up-to-date information. If your (or your end users' as relevant) information changes at any time, you must update the account to reflect those changes.
- 4.2 You must keep your account login and password confidential and protect them against misuse. You must not share your account with any third party (unless you are an administrator of an account). If you know or suspect that any third party knows your password or has accessed your account without authorisation, you must notify us immediately.
- 4.3 You agree that you are solely responsible for the activity that occurs under your account (and your end users' accounts).

## 5 FEES AND PAYMENT

- 5.1 We will invoice you in advance for the Fees.
- 5.2 You must pay our invoice:
- (a) If ordered through an authorised third-party marketplace, then in accordance with their terms;
  - (b) Otherwise, by the date specified on the invoice or, if no date is specified, within 7 days after the date of issue of the invoice;
  - (c) in the currency in force in Australia from time to time; and
  - (d) electronically to our bank account or by any payment method reasonably stipulated by us on our invoice or by an authorised third-party marketplace. No payment will be considered paid until it is received in cleared funds by us.
- 5.3 You must pay all Fees due to us under this agreement in full without any set off, deduction or withholding whatsoever.
- 5.4 If you are late in paying any part of any amounts due to us, we may (without prejudice to any other right or remedy available to us) do any or all of the following:
- (a) charge Interest on the amount due but unpaid and on amounts that have been disputed where the dispute has been resolved in our favour from time to time from the due date until payment (after as well as before judgment); and
  - (b) suspend the Services in accordance with clause 7.5(a).
- 5.5 You are liable for, and indemnify us from and against, any loss, costs, expense or liability incurred or suffered by us in connection with the recovery of overdue Fees or other amounts in connection with this agreement.

## 6 GST

- 6.1 For the purposes of this clause:
- (a) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
  - (b) the following defined terms have the meaning given in the GST Act: "GST", "Input Tax Credit", "Joint Venture Operator", "Recipient", "Representative Member", "Supply", "Taxable Supply" and "Tax Invoice".
- 6.2 Except under clause 6, the consideration for a Supply made under or in connection with this agreement does not include GST.
- 6.3 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under this agreement for that Supply; and
  - (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 6.4 For clarity, the GST payable under clause 6.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.

- 6.5 If either party has the right under this agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 6.6 Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 6.7 Where a Supply made under or in connection with this agreement is a Progressive or Periodic Supply, clause 6.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## **7 ACCEPTABLE USE AND SUSPENSION**

- 7.1 You must:
- (a) use the latest version of the Services;
  - (b) install updates or upgrades to the Services in the order in which the updates or upgrades are released by us; and
  - (c) comply with all reasonable directions given by us in connection with your installation (unless we have agreed to host the Services) and use of the Services.
- 7.2 You must ensure that each end user's use of the Services does not cause you to be in breach of this agreement. You are liable for all acts and omissions of end users as if they are your acts and omissions.
- 7.3 You must not sublicense, resell, resupply or share any Services with or to any third parties, except as expressly allowed under this agreement or with our written consent.
- 7.4 You must use the Services (and ensure your end users use the Services) in accordance with the Acceptable Use Policy.
- 7.5 Without limiting any other remedy we may have under this agreement or at law, we may suspend your access to the Services if:
- (a) you have not paid the Fees in accordance with this agreement (unless the portion of unpaid Fees is the subject of a bona fide dispute), provided that we have given you at least 7 days' notice that the Services would be suspended if the outstanding Fees are not paid in full;
  - (b) we have reasonable grounds to suspect that you or any of your end users has breached the Acceptable Use Policy (including if a third party alleges that to us with reasonable evidence);
  - (c) if activities occur on your account which, in our reasonable opinion, would or might cause damage to or impair the Services, infringe or violate any third party rights, or violate any applicable laws or regulations; or
  - (d) we receive a notice from a third party with a legitimate interest to be protected (including any regulatory body) requiring us to cease providing the Services to you or remove any content you are making available through the Services. Subject to any contrary legal requirements, we will provide you with a copy of the notice.
- 7.6 We will restore your access to the Services as soon as reasonably possible once the reason for the suspension has been addressed or removed.

## **8 CONFIDENTIAL INFORMATION**

- 8.1 Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any Confidential Information of the other party provided to or obtained by that party before or after entry into this agreement.
- 8.2 The obligations of confidence in clause 8.1 do not apply to Confidential Information that is:
- (a) that is required to be disclosed by applicable law, or under compulsion of law by a court or Government Agency or by the rules of any relevant stock exchange, as long as the disclosing party:
    - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
    - (ii) before disclosing any information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence;
  - (b) that is in the public domain otherwise than as a result of a breach of this agreement or other obligation of confidence; or
  - (c) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.
- 8.3 Each party may use and disclose Confidential Information of the other party only:
- (a) with the prior written consent of the other party; or
  - (b) to that party's directors, agents, professional advisors, employees, contractors and permitted subcontractors solely for the exercise of rights or the performance of obligations under this agreement
- 8.4 If either party discloses Confidential Information under clause 8.3, that party must ensure that such information is kept confidential by the person to whom it is disclosed and is only used for the purposes of performing the Services under this agreement.
- 8.5 Each party acknowledges that:
- (a) the other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and
  - (b) in addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of, and to compel specific performance of clauses 8.1 to 8.4.

## **9 PRIVACY**

- 9.1 We will collect, use, store and disclose Personal Information provided by you to us in accordance with the *Privacy Act 1988* (Cth), including the Australian Privacy Principles, and our Privacy Policy.
- 9.2 You must ensure that you have obtained all consents and made all disclosures necessary to enable us to lawfully handle the Personal Information provided by you (including the Personal Information of any end user), to the extent necessary to exercise our rights and perform our obligations under and in connection with this agreement.

## 10 INTELLECTUAL PROPERTY

### Our IP

- 10.1 The Services and all Unifii Material (including any modifications to them) remains our property and nothing in this agreement grants or transfers to you any Intellectual Property Rights in any Service, Unifii Material or other Intellectual Property Rights of Unifii.
- 10.2 You must only use Unifii Material in accordance with this agreement and any directions given by us.
- 10.3 You must not, and must ensure that your officers, employees, agents and subcontractors do not, use Unifii trade marks or logos except with our prior consent and as expressly provided in this agreement.

### Your IP

- 10.4 Customer Material (including modifications to it) remains your property and nothing in this agreement grants or transfers to us any Intellectual Property Rights in the Customer Material or other Intellectual Property Rights of yours.
- 10.5 You grant to us a non-exclusive, irrevocable, global licence to exercise and sublicense the Intellectual Property Rights in any Customer Material for the Term and solely for purposes of this agreement.
- 10.6 You grant to us the right to use your name, logo, trade marks and branding in our promotional and marketing material from time to time.

### Infringement claims

- 10.7 Each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) against all direct loss, damage, liability, costs or expenses suffered or incurred by the Indemnified Party arising in connection with and Infringement Claim.
- 10.8 An **Infringement Claim** means:
  - (a) where you are the Indemnifying Party, any Claim by a third party that the provision of the Customer Material, or any modifications and enhancements to the Services or Unifii Material made by you or on your behalf, or the use of any of them in accordance with this agreement infringe the Intellectual Property Rights of that third party; or
  - (b) where we are the Indemnifying Party, any Claim by a third party that the provision of the Services or Unifii Material (other than any Third Party Software or any modifications and enhancements to the Services or Unifii Material made by you or on your behalf) or their enjoyment or use in accordance with this agreement infringes the Intellectual Property Rights of that third party.
- 10.9 If an Infringement Claim is made:
  - (a) the Indemnified Party must promptly notify the Indemnifying Party of the Infringement Claim and will provide assistance at the Indemnifying Party's expense for the purposes of managing the Infringement Claim as reasonably requested by the Indemnifying Party;
  - (b) the Indemnifying Party is responsible for, and subject to clause 10.10 will have the right solely to control, the defence and settlement of the Infringement Claim at its own cost, provided that the Indemnifying Party must:

- (i) update, and consult with, the Indemnified Party about the progress of the Infringement Claim;
  - (ii) not settle the Infringement Claim in a manner that does not unconditionally release the Indemnified Party, or on terms that require the Indemnified Party to do or cease doing anything, without the Indemnified Party's prior written consent; and
  - (iii) not agree to any terms of settlement of any Infringement Claim which relate to acts, omissions, acknowledgements or representations of the Indemnified Party without the Indemnified Party's prior written consent.
- 10.10 If the Indemnifying Party fails to respond to, defend or oppose any Infringement Claim in accordance with clause 10.9 following 10 Business Days' notice from the Indemnified Party, the Indemnified Party may participate in the defence of the Infringement Claim at the Indemnifying Party's expense.
- 10.11 If an Infringement Claim is made and Unifii is the Indemnifying Party, we may (at our election):
- (a) modify the affected Services in order to avoid any infringement, provided that we can do so without adversely affecting the functionality, performance and quality of the Services;
  - (b) procure for you all rights required to continue using and exploiting the affected Services in accordance with this agreement without any modification;
  - (c) procure for you non-infringing replacements for the affected Services that are equivalent in functionality, performance and quality; or
  - (d) cease to provide the affected Services.

## 11 REPRESENTATIONS AND WARRANTIES

- 11.1 Each party represents and warrants, and it is a condition of this agreement:
- (a) it is a corporation (as defined in the *Corporations Act 2001* (Cth)) having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the laws of the jurisdiction of incorporation or registration;
  - (b) it has the corporate power to own its assets and to carry on its business as that business is now being conducted;
  - (c) it has taken all necessary action to authorise the execution, delivery and performance of this agreement;
  - (d) the execution, delivery and performance by it of this agreement does not and will not violate:
    - (i) its constitution or other constituent documents; or
    - (ii) any encumbrance or document which is binding upon it or any Related Body Corporate or any assets of it or any assets of a Related Body Corporate;
  - (e) no litigation, arbitration, dispute or administrative proceeding has been commenced, is pending or to its knowledge threatened, by or before any Government Agency, and no judgment or award has been given, made or is pending, by or before any Government Agency, which in any way questions its power or authority to enter into or perform its obligations under this agreement; and



(f) it does not, and its assets do not, enjoy immunity from any suit or execution.

11.2 The representations made and warranties given in clause 11.1 are regarded as repeated each day during the Term with respect to the facts and circumstances then subsisting.

## **12 DISCLAIMER**

12.1 Other than as expressly stated in this agreement and to the maximum extent permitted by law, we do not make any warranties, guarantees or representations of any kind (whether express or implied, or written or oral) to you or any third party with respect to any Services provided under this agreement or any Order.

12.2 You acknowledge and agree that:

- (a) the Services may require certain Third Party Software and hardware to function; and
- (b) performance of the Services may be affected if you do not make use of such Third Party Software and hardware with the Services.

12.3 Subject to 13.6, we specifically disclaim all liability for and do not make any warranty or representation:

- (a) that the Services may be customised to satisfy all of your requirements or intended purposes;
- (b) in respect of errors caused by or related to:
  - (i) use of the Services in a manner inconsistent with the Documentation, this agreement or the applicable Order;
  - (ii) any modification or other change to the Services that is not authorised by us;
  - (iii) your systems, network, operations or end users; or
  - (iv) any other cause not inherent in the Services;
- (c) that the Services are designed, intended for use or should be relied upon in environments requiring fail-safe performance, including without limitation, as part of a life support, building or real property security or maintenance, critical or emergency process or service, or that the Services are a substitute or replacement for expert or professional decisions or judgment;
- (d) in relation to the accuracy and suitability of any information or data stored in or produced by the Services; and
- (e) in relation to any third party website to which the Services may be linked or any contract or transaction entered into by you or an end user.

## **13 LIMITED LIABILITY**

13.1 Subject to clauses 13.4 and 13.6, each party's liability for any loss or damage, however caused (whether in contract, tort (including negligence), statute or otherwise), suffered by the other in connection with this agreement is limited to the Fees paid by you to us under this agreement.

13.2 The limitation set out at clause 13.1 is an aggregate limit for all Claims, whenever made.

13.3 To the extent permitted by law, the liability of a party to this agreement to the other party under or in connection with this agreement will be reduced proportionately by the extent, if any, to which the acts or omissions of the first party or those of any of its Personnel or end



users caused or contributed to the relevant loss or damage suffered or incurred by the second party.

- 13.4 Neither party is liable for any Consequential Loss however caused (including by negligence), suffered or incurred in connection with this agreement.
- 13.5 For clarity, and without limiting clauses 13.1 to 13.4, the parties agree that clauses 13.1 to 13.4 are to apply in connection with a breach of this agreement, anticipated breach of this agreement and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.
- 13.6 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by us in connection with this agreement, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 13.1 to 13.4 (and any inconsistent limitation expressed elsewhere in this agreement) do not apply to that liability and instead our liability for such failure is limited to (at our election), in the case of a supply of goods, replacement of the goods or paying the cost of having the goods repaired or replaced or supplying equivalent goods or repairing the goods, or in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

## 14 DISPUTE RESOLUTION

- 14.1 This clause 14 applies to any dispute that arises between you and us in connection with this agreement (**Dispute**).
- 14.2 Subject to clause 14.6, neither party may commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with this clause 14.
- 14.3 If either party considers that a Dispute has arisen, it may issue a notice to the other party, setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 14.4 The parties must promptly hold discussions between representatives of each party after the issue of a Dispute Notice to attempt to resolve the Dispute.
- 14.5 If the Dispute has not been resolved within 5 Business Days after commencement of discussions, either party may notify the other that it requires the dispute to be mediated in accordance with the following:
- (a) the parties must agree to the mediator and the location, date and time of the mediation, but if they can't agree within the next 5 Business Days after that notice, the things which are not agreed will be decided by the President for the time being of the Law Society of NSW or their nominee;
  - (b) the parties must attend such mediation with a view to resolving the dispute;
  - (c) each party's professional advisers may attend as the mediator may allow;
  - (d) the mediator decides how the mediation is conducted; and
  - (e) the cost of the mediator and the mediation will be borne equally between the parties but each party pays its own professional advisers.

## **15 TERMINATION**

### **Terminating an Order**

- 15.1 A party may terminate an Order by written notice to the other party if the first party commits a breach of this agreement in connection with that Order that has a material and adverse effect on the other party and the first party fails to remedy that breach within 30 days of receiving a notice from the other party requiring the first party to remedy that breach (where capable of remedy). In the event a party elects to terminate an Order under this clause 15, that Order will terminate on the date specified in that notice or, if no date is specified, immediately.
- 15.2 Where we are entitled to terminate an Order due to a breach by you, we may elect to terminate this agreement in whole.

### **Terminating the agreement**

- 15.3 A party may terminate this agreement by written notice to the other party if:
- (a) a party commits a breach of this agreement that relates to more than one Order that has a material and adverse effect on the other party and fails to remedy that breach within 30 days of receiving a notice from the other party requiring the first party to remedy that breach (where capable of remedy); or
  - (b) an Insolvency Event occurs in relation to the other party (subject to applicable law),
- in which case this agreement will terminate on the date specified in that notice or, if no date is specified, immediately.

### **Termination for involvement in competitive service**

- 15.4 We may terminate this agreement immediately by written notice to you if you commence or engage in, whether directly or indirectly and whether solely or jointly with any other person and whether as principal, agent, shareholder, partner or party to a joint venture, any of the following businesses or undertakings as its principal business or undertaking and not as a business or undertaking incidental to its business, in competition with us or our Related Bodies Corporate:
- (a) development of Services of the same or similar kind as the Services; or
  - (b) maintenance of Services of the same or similar kind as the Services.
- 15.5 For the purposes of clause 15, you will not be taken to have engaged in carrying on business or undertaking in competition with us solely because you hold less than 10% of the issued shares or units in a company or trust listed on a stock exchange which carries on or is engaged in a business or undertaking in competition with us.

### **Consequences of termination**

- 15.6 On termination or expiry of this agreement:
- (a) the parties may not enter into any new Orders under this agreement;
  - (b) accrued rights or remedies of a party are not affected; and
  - (c) each party must deliver to the other any of the other party's Confidential Information or other property in its care, custody or control.
- 15.7 The following clauses survive termination of this agreement:
- (a) clauses 5, 7, 10.5, 10.6, 13, 14, 15, 19 and 20;

- (b) any indemnities; and
- (c) any provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination or expiry.

## **16 COMPLIANCE**

- 16.1 You must comply with all applicable laws including regulations, mandatory industry codes and applicable standards published by Standards Australia Limited from time to time in your use of the Services and performance of this agreement.
- 16.2 You must, and must take reasonable steps to procure that your Personnel will, comply with all applicable anti-bribery and corruption laws and regulations in connection with this agreement.
- 16.3 You are solely responsible for your own compliance with any regulatory requirements that apply to you in connection with its use of the Services.
- 16.4 You must notify us:
  - (a) of any technical requirements that may result from your regulatory requirements prior to entering into the agreement; and
  - (b) promptly upon becoming aware of any additional or modified requirements or obligations relating to the Services applying or likely to apply to you, which will be taken to be regulatory requirements for the purposes of this agreement.
- 16.5 We will cooperate with you to determine whether the Services are consistent with those regulatory requirements. Additional fees and terms may be payable for any work performed by us in assisting you with such determination.

## **17 FORCE MAJEURE**

- 17.1 Any delay in or failure of performance by either party of any of its obligations under this agreement or any Order due (in whole or in part) to a Force Majeure Event (other than a failure to pay amounts when due) will not be considered a breach of this agreement or the applicable Order.
- 17.2 A party will be relieved of its obligations under this agreement to the extent any such obligation is prevented by a Force Majeure Event. Such relief will extend for the duration of that Force Majeure Event and for a reasonable period of time following the end of the Force Majeure Event to allow for the party to resume the performance of its obligations.

## **18 GENERAL**

- 18.1 Unless expressly stated otherwise in this agreement, the rights and remedies under any indemnity or otherwise provided under this agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.
- 18.2 Each indemnity contained in this agreement is a continuing obligation notwithstanding:
  - (a) any settlement of account; or
  - (b) the occurrence of any other thing,and it is not necessary for a party to incur expense or make payment before enforcing or making a Claim under an indemnity.
- 18.3 Time is not of the essence in the performance of obligations under this agreement except in relation to the performance of payment obligations.

- 18.4 This agreement and each Order states all the express terms of the agreement between the parties in respect of its subject matter. This agreement supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this agreement. Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this agreement.
- 18.5 This agreement may only be amended by written agreement of both parties, except as expressly set out in this agreement.
- 18.6 Unless expressly stated otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 18.7 We may subcontract the performance of all or any part of our obligations under this agreement. You must not subcontract the performance of all or any part of your obligations under this agreement without our prior written consent.
- 18.8 You must not assign, in whole or in part, or novate your rights and obligations under or in connection with this agreement without the prior consent of us (such consent not to be unreasonably withheld). We may freely assign or novate our rights or obligations under this agreement.
- 18.9 If a party to this agreement consists of more than one person, or a term is used in this agreement to refer to more than one party:
- (a) an obligation of those persons is joint and several; and
  - (b) a right of those persons is held by each of them severally.
- 18.10 The failure of a party at any time to require full or partial performance of any provision of this agreement does not affect in any way the right of that party to require that performance subsequently. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 18.11 A clause or part of a clause of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining clauses or parts of the clause of this agreement continue in force. No provision of this agreement will be interpreted adversely to a party simply because it drafted or proposed the provision.
- 18.12 This agreement is governed by the laws in force in New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

## 19 DEFINITIONS

- 19.1 Capitalised terms not otherwise defined in the body of these Terms have the meanings given as follows:
- (a) **Acceptable Use Policy** means the policy of that name maintained by us, as updated or replaced from time to time.
  - (b) **Approved Purpose** means the purpose described in the applicable Order.
  - (c) **Authorised End User** means the number of end users authorised to use the Service as specified in the applicable Order.

- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, Australia.
- (e) **Claim** any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).
- (f) **Confidential Information** means the terms of this agreement and any information:
  - (i) relating to the business and affairs of that party;
  - (ii) relating to the customers, clients, employees, sub contractors or other persons doing business with that party;
  - (iii) which is by its nature confidential;
  - (iv) which is designated as confidential by that party; or
  - (v) which the other party knows or ought to know, is confidential,and includes all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of Unifii, includes any Services and Unifii Material and, in the case of the Customer, includes Customer Material.
- (g) **Consequential Loss** means loss of profits, loss of revenues, loss arising in connection with the matters disclaimed in clause 12, loss of use of the Services, loss of reputation, loss of actual or anticipated savings, lost opportunities, including opportunities to enter into arrangements with third parties, loss or corruption of data, indirect loss or consequential loss (being any loss that does not flow naturally, that is, according to the ordinary course of things).
- (h) **Customer Material** means any material provided by or to which access is given by you to us for the purposes of this agreement, including documents, software, object code, source code, configurations, equipment, hardware, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
- (i) **Documentation** means any Services documentation (regardless of media) licensed to you under the applicable Order.
- (j) **Fees** means the fees set out in an Order and any other amounts contemplated by this agreement as being payable by you to us.
- (k) **Force Majeure Event** means any occurrence or omission outside a party's control, and:
  - (i) a physical natural disaster including fire, flood, lightning, earthquake or act of God;
  - (ii) war, or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil disorder, rebellion, revolution, national emergency (whether in fact or in law) or declaration of martial law;
  - (iii) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors;
  - (iv) any circumstances relating to an epidemic, pandemic, quarantine restriction or public health emergency (whether officially declared or not);

- (v) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
  - (vi) failure of a third party supplier;
  - (vii) failure of a third party to provide a necessary input;
  - (viii) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any Government Agency; and
  - (ix) any law taking effect after the date of this agreement.
- (l) **Government Agency** means:
- (i) a government or government department or other body;
  - (ii) a governmental, semi-governmental or judicial person; or
  - (iii) a person (whether autonomous or not) who is charged with the administration of a law.
- (m) **Insolvency Event** means any of the following events:
- (i) a controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to the party, or over any of the property of the party;
  - (ii) the party becomes bankrupt;
  - (iii) a controlling trustee is appointed to the party, or over any of the property of the party;
  - (iv) the party or the party's property becomes subject to a personal insolvency arrangement under Part X *Bankruptcy Act 1966* (Cth) or a debt agreement under Part IX of that Act;
  - (v) the party is unable to pay its debts when they become due and payable;
  - (vi) the party ceases to carry on business; or
  - (vii) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition,
- but **excludes any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other party beforehand and in compliance with those terms.**
- (n) **Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
- (o) **Interest** means interest on any payment owing under this agreement calculated:
- (i) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for commercial overdrafts or, if lower, the maximum rate permitted by applicable law; and

- (ii) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.
- (p) **Licensed Territory** means the territory specified in the applicable Order.
- (q) **Order** means an order for Services under this agreement.
- (r) **Order Term** has the meaning given at clause 2.2.
- (s) **Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).
- (t) **Personnel** means a party's employees, secondees, directors, officers, contractors, professional advisers and agents.
- (u) **Privacy Policy** means our policy set out at <https://www.unifii.com.au/privacy-policy>, as may be amended by us from time to time.
- (v) **Service** means the software-as-a-service specified in the applicable Order.
- (w) **Term** has the meaning given at clause 2.1.
- (x) **Third Party Software** means any software that is not owned or licensed to you by us.
- (y) **Unifii Material** means any material provided by or to which access is given by us to you for the purposes of this agreement, including documents, software, object code, source code, configurations, equipment, hardware, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means, and includes all Services and materials (of any nature) created by us or on our behalf in the course of providing the Services.





## Acceptable Use Policy

### Usage restrictions

- 19.1 You must not, and must not authorise or permit any end user to:
- (a) use the Services:
    - (i) other than for your own internal business purposes;
    - (ii) to engage in or facilitate fraudulent or illegal activity;
    - (iii) to access, store, distribute, transmit, publish or communicate material that is unlawful, harmful, threatening, obscene, pornographic, defamatory, offensive, abusive, indecent, menacing, unwanted, infringing, harassing or discriminatory;
    - (iv) to promote violence;
    - (v) to cause damage or injury to any person or property;
    - (vi) to gain unauthorised access to or interfere with any third party's online resources or systems, including any form of hacking;
    - (vii) in a way you know, or ought to reasonably known, infringes any third party's Intellectual Property Rights; or
    - (viii) in a way that disrupts, misuses or excessively uses (other than as part of a pre-agreed performance testing or penetration testing exercise) the hardware, bandwidth access, storage space or other resources of Unifii or Unifii's other customers;
  - (b) circumvent any of our security measures;
  - (c) decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any Service;
  - (d) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of any Service (as applicable) in any form or media or by any means;
  - (e) develop any software or system that incorporates or otherwise uses any Service (or any component of any Service) other than in accordance with the Documentation without our prior written consent;
  - (f) access all or any part of any Service in order to build a product or service which competes with any Service;
  - (g) access, store, distribute or transmit any viruses, malware or any other computer program that is designed to, or may in the ordinary course of its operation, prevent, inhibit or impair the performance of the Services; or
  - (h) use the Services in a way that may violate any laws or regulations, or cause us to be in violation of any laws or regulations.

## End users

19.2 You must ensure that your end users:

- (a) comply with all relevant terms of the agreement, and all applicable laws and regulations, in connection with their use of the Services;
- (b) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify you;
- (c) understand and agree that:
  - (i) the Services may enable or assist them to access the website content of, correspond with, and purchase products and services from, third parties and that it does so solely at its own risk;
  - (ii) you are able to disable their access to the Services without notice and without liability to them; and
  - (iii) if their account is assigned by an administrator, that the administrator can access or control their account; and
- (d) are aware that their Personal Information is provided to us for use in accordance with our privacy policy.