



These United-IX General Terms and Conditions (“Terms and Conditions”) shall apply to the United-IX Connection Agreement between United Internet Exchange, LLC (“United-IX”) and Customer and to any attachments or schedules attached thereto or incorporated by reference therein (the “Connection Agreement”).

1 DEFINITIONS

- 1.1 “Agreement” means the Connection Agreement, these Terms and Conditions, the SLA (defined below) and any attachments or schedules attached thereto or incorporated by reference therein. Capitalized terms used in these Terms and Conditions and not otherwise defined herein shall have the meanings ascribed in the Connection Agreement or the SLA.
- 1.2 “Customer Connection” means the physical connection, directly or indirectly, between the United-IX Switching Fabric and the equipment of Customer.
- 1.3 “Customer” means the customer party set forth in the Connection Agreement.
- 1.4 “United-IX Switching Fabric” means the Internet Exchange Infrastructure operated by United-IX consisting of metro networks that facilitate peering and IP traffic exchange between parties connected thereto for the location as specified in the Connection Agreement.
- 1.5 “Network Outage” means an instance in which no traffic can pass in or out of the selected point of presence (POP) through which Customer connects to the United-IX backbone for more than 15 consecutive minutes. Network Outages exclude Scheduled Maintenance and emergency maintenance, and any unavailability or outage resulting from a) issues with Customer’s applications, equipment or facilities; (b) any negligence or willful misconduct of Customer; (c) any entity or connection other than United-IX; or (d) any force majeure as set forth in Section 13.
- 1.6 “Scheduled Maintenance” refers to any upgrades or modifications to the United-IX backbone (or portion thereof) or any United-IX datacenter. Scheduled Maintenance may temporarily degrade the quality of service or include short interruptions of service. United-IX will use commercially reasonable efforts to ensure that any interruption of service is kept to a minimum and performed between the hours of 12:00am & 5:00am (local time of the United-IX POP to which Customer is connected). Except in the case of an emergency, United-IX will use commercially reasonable efforts to provide the Customer with at least five (5) days advance notice of any Scheduled Maintenance. United-IX may undertake emergency maintenance (which may include a total interruption of service) at any time deemed necessary by United-IX.
- 1.7 “Packet Loss” means the average percentage of IP packets transmitted between selected POPs during a calendar month that are not successfully delivered, as measured by United-IX.
- 1.8 “Confidential Information” means any business, technical, financial or other information disclosed by one party to the other pursuant to this Agreement that is identified as confidential at the time of its disclosure. Confidential Information is the confidential information of and proprietary to the party disclosing the information. Without limiting the foregoing, United-IX and Customer understand and agree that the material terms of this Agreement, and any functional limitations of, or errors in, the Services are United-IX Confidential Information, and all data transmitted by Customer and stored within the United-IX systems (if applicable) is the Confidential Information of Customer.

2 SERVICES

- 2.1 United-IX shall use commercially reasonable efforts to provide the Services (as defined in the Connection Agreement) via the United-IX Switching Fabric in accordance with this Agreement.
- 2.2 Service Level Agreement. United-IX will use commercially reasonable efforts to provide the Services in accordance with the applicable service levels set forth in the United-IX Service Level Agreement (“SLA”).

3 CUSTOMER OBLIGATIONS

Customer acknowledges and agrees that United-IX’s provision of the Services is dependent upon Customer cooperating with United-IX and performing the tasks and providing the items as may be identified in writing with certain Services. Customer shall obtain all consents, licenses or other rights from third parties necessary for United-IX to perform the Services without incurring any liability to such third parties and shall find an alternative solution in the event a third party refuses such consent. Customer agrees to cooperate with and assist United-IX in the performance of the Services by timely providing such information and access to personnel and other resources as may be necessary in connection with such performance. The parties agree that, to the extent Customer declines, fails or delays in performing the obligations set forth in this Section 3 for any reason, United-IX’s obligations, performance times and/or charges for the Services shall be appropriately extended, adjusted or excused, as determined by United-IX in its discretion. In addition, Customer shall be solely responsible for obtaining and maintaining all hardware, software and third party services necessary for Customer to access the Services.

4 FEES AND PAYMENTS

- 4.1 Customer agrees to pay the fees in the manner as set forth in the Connection Agreement.
- 4.2 All fees are exclusive of, and Customer is responsible for, applicable federal, state, or local sales, use, excise, export or other applicable taxes other than taxes on the net income of United-IX. Customer shall pay or reimburse United-IX for any such taxes and United-IX may add any such taxes to invoices submitted to Customer by United-IX.
- 4.3 United-IX shall invoice Customer for amounts due under this Agreement. All amounts to be paid by Customer pursuant to this Agreement are due and payable upon Customer’s receipt of United-IX’s invoice therefor. All payments made by Customer to United-IX shall be in U.S. Dollars. All amounts not paid within 30 days of the date of the invoice therefor shall bear interest at the rate of 1.5% per month or at the highest interest rate allowed by law, whichever is less, from the date due until paid, which interest shall be added to the unpaid amount due and owing by Customer to United-IX.
- 4.4 In addition to any other remedies available to United-IX, the failure of Customer to pay any amounts when due shall constitute sufficient cause for United-IX to discontinue, withhold or suspend its provision of Services to Customer, and any such action shall not be deemed a breach of this Agreement by United-IX. United-IX has the right to increase its fees upon prior written notice to Customer provided that such increases shall not apply until the next monthly billing period. Customer agrees to pay all costs involved in collecting overdue amounts, including, without limitation, attorneys’ fees.

5 TERM AND TERMINATION

- 5.1 **Term.** This Agreement will commence upon the Effective Date and will continue either: i) on a month by month basis; or ii) as specified in the Connection Agreement for specific services, unless earlier terminated in accordance with Section 5.2. The initial month and all additional monthly periods shall collectively be designated as the “Term”.
- 5.2 **Termination.** Either party may terminate this Agreement for any reason or no reason upon thirty (30) days written notice prior to the end of the Term. In addition, either party may terminate this Agreement at any time upon written notice in the event the other party has committed a material breach of this Agreement

which remains uncured twenty (20) days after written notice of such breach (or ten (10) days in the event of Customer's unitedix.net nonpayment of amounts due United-IX hereunder). In addition, either party may terminate this Agreement immediately upon written notice if: (i) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors; or (ii) proceedings (whether voluntary or involuntary) are commenced against the other party under any bankruptcy, insolvency or debtor's relief law and such proceedings are not vacated or set aside within sixty (60) days from the commencement thereof.

- 5.3 **Events Upon Termination.** Upon the expiration or termination of this Agreement for any reason: (i) all licenses granted herein shall automatically and immediately terminate and United-IX shall have no further obligation to provide or perform any Services for Customer; (ii) United-IX shall invoice Customer for all accrued fees and all reimbursable expenses and Customer shall pay the invoiced amount immediately upon receipt of such invoice; and (iii) each party will return or destroy (at the request of the disclosing party) all Confidential Information of the other party in its possession or control, and certify its compliance with this provision to the disclosing party in writing. All provisions which by their terms should survive termination shall do so; by way of example but not limitation all payment obligations and duties of confidentiality shall survive.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 During the Term, Customer hereby grants to United-IX a limited, non-exclusive, royalty-free, fully paid-up right and license to (i) edit, modify, adapt, translate, exhibit, publish, transmit, use, reproduce, distribute, publicly perform, publicly display and digitally perform all data, text, pictures, sound, graphics, logos, trademarks, symbols, video and other materials provided by Customer to United-IX under this Agreement including, without limitation, content and information (the "**Content**") solely to the extent necessary to render the Services to Customer hereunder; and (ii) capture, collect, store, translate, transmit, use, reproduce, and distribute all data and information about, or provided by, Customer (the "**Data**") solely to the extent necessary to render the Services to Customer hereunder. United-IX shall be free to use aggregate Data not capable of identifying Customer for United-IX's own internal use and marketing, and Customer hereby grants United-IX a worldwide, non-exclusive, perpetual, royalty-free, fully paid-up license to use such aggregate information for such purposes including, without limitation, improving the operation of the Services, statistical analysis and distributing aggregated statistics about the Services to clients, potential clients and the general public.
- 6.2 During the Term, United-IX hereby grants to Customer a limited, non-exclusive, non-transferable license to: (i) access and use the Services as set forth in the Connection Agreement; (ii) view, download and make a reasonable number of copies of data, forms and information made available by United-IX through the Services, provided Customer keeps intact all attribution, copyright and other proprietary notices. The licenses granted in this Section 6.2 also extend to those individuals authorized by Customer to access the Services as provided herein.
- 6.3 Nothing in this Agreement shall be construed as an implied grant to Customer of any right to, and Customer shall not, and shall not permit any person or third party to: (i) distribute, disclose or allow use of any of the Services, in any format, through any timesharing service, service bureau, network or by any other means, to or by any third party, except as expressly set forth herein; (ii) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of any of the software comprising the Services (if applicable) by any means whatsoever; (iii) copy any portion of the Services except as expressly provided herein; or (iv) modify, alter or create any derivative works of any of the software comprising the Services (if applicable) or any documentation provided by United-IX hereunder in any manner whatsoever. Customer shall cooperate with United-IX, and shall render all reasonable assistance requested by United-IX, to assist United-IX in preventing and identifying any use of or access to the Services in violation of the terms and restrictions of the license granted herein or any other breach of this Agreement.

7 PASSWORD PROTECTION

Depending on the particular Service(s) Customer has elected to receive and pursuant to any Connection Agreement Customer shall: (a) ensure that only its full-time personnel shall have access to any passwords provided by United-IX for use by Customer in connection with the Services; (b) not disclose such passwords to any third party; (c) be solely responsible for assigning roles and authority levels to its personnel with respect to its access and use of the Services; and (d) be solely responsible and liable for ensuring that all personnel Customer authorizes to access the Services comply with all the terms and conditions of this Agreement. Customer acknowledges and agrees that it is solely responsible for strictly maintaining the confidentiality and integrity of all passwords provided by United-IX. Customer shall notify United-IX immediately in writing (or via email) if the security or integrity of any password or authority level has been compromised, or if Customer becomes aware of any conduct that is in violation of the terms and conditions of this Agreement.

8 CONFIDENTIAL INFORMATION

- 8.1 **Protection of Confidential Information.** Except as expressly and unambiguously allowed herein, each party agrees: (i) to hold the other's Confidential Information and any information derived therefrom in strict confidence and use all reasonable efforts with respect to the handling and protection of such Confidential Information (including, without limitation, all precautions it employs with respect to its own confidential information); and (ii) to only use such Confidential Information in its performance of its obligations under this Agreement and its exercise of those rights set forth in this Agreement. Further, each party agrees not to circulate Confidential Information within its organization except to those employees, agents, officers, directors, and subcontractors who have a legitimate "need to know" such information and who are obligated by appropriate written agreements to keep such information confidential in a manner no less restrictive than set forth in this Agreement, and each party acknowledges and agrees that it is responsible and liable for such persons compliance with such confidentiality obligations.
- 8.2 **Permitted Disclosures.** A party shall not be obligated under Section 8.1 with respect to information that it can document (i) is or has become readily publicly available without restriction through no fault of such party or its personnel, (ii) is received, without restriction, from a third party lawfully in possession of such information and lawfully empowered to disclose such information, or (iii) was rightfully in such party's possession without restriction prior to its disclosure by the other party; provided, however, that should any information come within any circumstance listed in this sentence, this sentence does not authorize the recipient to infringe any proprietary rights of the disclosing party.

9 WARRANTIES

- 9.1 Each party represents and warrants to the other party that it has the right to enter into this Agreement and perform its obligations hereunder in the manner contemplated by this Agreement, and this Agreement shall not conflict with any other agreement entered into by it.
- 9.2 Customer represents and warrants that it shall comply with all applicable federal, state and local laws, rules and regulations in connection with its use of the Services, and that it owns (or has been duly licensed) all rights in all Content delivered to United-IX hereunder, as well as in all Data transmitted hereunder, as required in order to grant United-IX the licenses contained herein.
- 9.3 Customer's sole remedy and United-IX's sole obligation with respect to any Service deficiencies shall be the remedies (if applicable) pursuant to the SLA.

10 DISCLAIMER

Except as otherwise expressly provided herein, United-IX makes no, and hereby disclaims all, warranties, express or implied, including any warranties of merchantability or fitness for a particular purpose relating to any services provided pursuant to this Agreement. To the full extent permitted by applicable law, Customer agrees that United-IX provides all Services "AS IS" and with no warranties, including but not limited to any implied warranties and any warranties as to correctness, completeness, accuracy, or fitness for a particular purpose.

11 INDEMNIFICATION

Customer shall indemnify, defend and hold United-IX harmless from and against any and all costs, expenses, losses, damages and liabilities (including reasonable attorneys' fees) incurred by United-IX in connection with any claim or suit instituted against United-IX on account of: (a) the Content; (b) any Data; or (c) the conduct of Customer's business, including without limitation the use by Customer of the Services. Customer shall not enter into any agreement, agreed order, consent judgment, or the like which is binding on United-IX without United-IX's consent unless a full and unconditional release is provided to United-IX and no agreed order, consent judgment or the like is entered to the prejudice of United-IX. United-IX shall have the right to employ separate counsel and participate in the defense and investigation of any such claim or suit at its sole cost.

12 LIMITATION OF LIABILITY

To the full extent permitted under applicable law, United-IX shall not be responsible or liable to Customer or any third party with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other theory: (a) for any claims, actions or causes of action arising out of, under or in connection with any act or omission of, or material or services provided by, any third party hired by Customer or United-IX; (B) for interruption of use, for loss or inaccuracy or corruption of software or data, or for cost of procurement of substitute goods, services or technology; (C) for any indirect, incidental, consequential, exemplary or punitive damages including, but not limited to, loss of profits, even if United-IX is made aware of the possibility of such damages; (D) for any amounts in excess of the aggregate of fees paid to United-IX under this agreement during the three month period immediately preceding the date in which the most current event giving rise to such liability occurred; or (E) for any matter outside of United-IX's reasonable control.

13 FORCE MAJEURE

If either party is prevented, hindered, or delayed in the performance or observance of any of its obligations hereunder (excluding payment obligations) by reason of any circumstance beyond its reasonable control, including without limitation, acts of God, war, strikes, revolutions, acts or omissions of third parties hired by Customer or United-IX, lack or failure of transportation facilities, laws or governmental regulations, failure of delivery or failure of third party performance, that party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and that party continues to use all commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

14 UPDATES TO THESE TERMS AND CONDITIONS

United-IX reserves the right, at its discretion, to change, modify, add, or remove portions of these Terms and Conditions at any time upon written notice to Customer or by posting the revised Terms and Conditions to the United-IX website with an email notice to Customer. If Customer does not agree with any such changes, upon receipt of notice from United-IX, Customer's sole remedy is to exercise its termination rights pursuant to the first sentence of Section 5.2. Any proposed amendment or change to these Terms and Conditions made by Customer must be agreed to by Customer and United-IX in writing.

15 MISCELLANEOUS

This Agreement contains the entire agreement of the parties, and supersedes any and all previous agreements with respect to the subject matter hereof, whether oral or written. No Customer general terms and conditions, Customer purchase order terms or other terms of Customer apply hereto. In the event of any conflict between the provisions of this Agreement and any terms and conditions of an exhibit, the exhibit shall govern and control solely with respect to the particular Service described therein. This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by Customer without United-IX's prior written consent, such consent not to be unreasonably withheld. United-IX may subcontract certain of its obligations hereunder but will not assign this agreement in its entirety without Customer's consent (which shall not unreasonably be withheld or delayed); provided that United-IX may, without such consent, assign this Agreement to a purchaser or acquiror of substantially all of its business and assets. All notices and consents required or permitted to be given under this Agreement shall be in writing to the parties at the addresses designated in the Connection Agreement or to such other address as either party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made in the form of overnight courier with delivery confirmation, certified letter, confirmed facsimile transmission or acknowledged receipt of electronic mail. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Illinois and exclusive venue shall be in the state or federal courts having within their jurisdiction Cook County. This Agreement may be executed in two counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one contract. The headings in this Agreement are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.