

Unigy® 360 Evaluation Terms and Conditions

Version 1.3, Issued 4 January 2018

These terms and conditions (the “Agreement”) shall govern the evaluation of Cloud Services and is entered into between IPC and the Customer and shall take effect upon execution of the Evaluation Agreement Order Form.

AGREED TERMS

In consideration of the mutual covenants and conditions contained in this Agreement, the parties agree:

1 INTERPRETATION

1.1 In this Agreement, the following definitions shall apply:

Agreement means this Agreement and any and all attached appendices, exhibits, and schedules and documents incorporated by reference.

Confidential Information means information that is confidential and proprietary to a party, including information which is marked as being confidential or which, from its nature, content or the circumstances in which it is provided, might reasonably be supposed to be confidential and (i) information belonging to either party or one or more of its affiliates, or to either party’s customers, suppliers, contractors and other third parties doing business with such party; (ii) the terms and conditions of this Agreement; and (iii) the Cloud Services and the intellectual property of IPC and/or its suppliers, contained or embodied in the Cloud Services.

Customer Data means personally identifiable information concerning Customer personnel or clients.

Documentation, with respect to any Product, refers to the user and product manuals, whether in printed or electronic form, that IPC provides to Customer in connection with such Product.

Equipment means the equipment related to the Cloud Services that comprise hardware and other equipment (excluding Software) and that are to be supplied by IPC to Customer as set out in the Evaluation Agreement Order Form.

Shipping Site(s) means the address set forth on Evaluation Agreement Order Form.

Intellectual Property Rights means all copyright, patent rights, trade or service marks, design rights, rights in or relating to databases, or any other intellectual property rights (registered or unregistered) throughout the world.

Open Source Software means third party software that IPC (i) obtains pursuant to a license allowing or requiring that the applicable source code be shared with IPC customers and (ii) delivers to Customer as part of or in conjunction with a Product. IPC will identify Open Source Software on the IPC Customer Portal or on Customer’s request.

Cloud Services means the Unigy 360 cloud services, including the Software, related Equipment and Documentation.

Proprietary Software means Software other than Open Source Software.

Representative mean a unique employee of the Customer.

Software means software and firmware IPC provides to Customer, including without limitation software and firmware proprietary to IPC or an IPC supplier, and Open Source Software, and any releases of such Software IPC provides in the performance of this Agreement.

System means the aggregate of Cloud Services deployed at the Shipping Site(s) pursuant to the terms of this Agreement.

Territory means the sovereign state where the users are primarily located.

Trial Period is defined under Section 9.1.

1.2 In this Agreement:

- (a) any terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural;
- (b) the words "includes" or "including" shall be construed without limitation to the generality of the preceding words; and
- (c) references to clause numbers or Schedules shall be to those in this Agreement.

2 RIGHT TO USE

- 2.1 IPC hereby grants to Customer the right to use the Cloud Services during the Trial Period for the purpose of evaluating the Cloud Services on the terms and conditions set out in this Agreement. The Customer may only use the Cloud Services in a trial environment and a concept showroom environment, for the avoidance of doubt the Customer may not use the Cloud Services, Software and Open Source Software for any commercial purpose.
- 2.2 Customer shall not transfer the Cloud Services or any part of the Cloud Services to any third party nor allow any third party not approved by IPC to have access to the Cloud Services, and shall not attempt to decompile, disassemble, or reverse engineer the Cloud Services.
- 2.3 Customer shall use the Cloud Services only in accordance with the Documentation and any reasonable instructions provided by IPC from time to time.
- 2.4 Only communications between Customer and Customer's Representatives will be recorded.
- 2.5 In the event that IPC provides dial tone as part of the Services, Customer shall not use the dial tone number for any other reason other than communications between Customer and Customer's Representatives.

3 DELIVERY AND INSTALLATION

- 3.1 IPC shall, at no cost to Customer, deliver the Cloud Services to the Shipping Site(s) and Customer shall install the Cloud Services under the instruction of IPC. IPC shall provide all other such assistance and cooperation to Customer as Customer may reasonably request in connection with Customer's installation and use of, the Cloud Services.
- 3.2 All risk of loss of or damage to the Cloud Services shall pass from IPC to Customer upon IPC's delivery of the Cloud Services. Title in the Cloud Services (including any intellectual property rights in the Cloud Services) shall not pass to the Customer.
- 3.3 The Equipment shall remain at the Shipping Site(s) unless otherwise agreed in writing by IPC prior to any such relocation and, upon IPC's reasonable request; IPC shall have the right to inspect the Cloud Services.

4 IPC'S REPRESENTATIONS AND WARRANTIES

- 4.1 IPC hereby represents and warrants:
 - (a) No third party (including without limitation governmental) permissions and approvals are required for IPC to enter this Agreement and provide the Cloud Services to Customer under this Agreement; and
 - (b) any services provided by IPC under this Agreement will be provided with reasonable care and skill.
- 4.2 Except for Section 4.1, and notwithstanding anything to the contrary in this Agreement, the Cloud Services are provided on an "AS IS" basis for evaluation purposes only.

5 CUSTOMER'S RESPONSIBILITIES AND ACCESS

- 5.1 Customer will provide:
 - (a) an electrical supply and space sufficient for all relevant parts of the Cloud Services in accordance with the Documentation;

- (b) full and timely access to the Cloud Services, the Shipping Site(s) and all other information and facilities and services reasonably required by IPC or its agents, employees or contractors to perform IPC's obligations at no charge;
- (c) information in connection with this Agreement that is accurate and complete in all material respects; and
- (d) Comply with the Unigy 360 Network Configuration Guide, which Customer agrees it has received and acknowledged.

5.2 Customer agrees to attend weekly phone meetings with IPC with the intention of providing suggestions, comments, feedback, ideas or know-how, in any form ("Feedback"), Customer agrees that IPC may, and hereby grants IPC a worldwide, irrevocable license to, use and exploit Feedback in connection with developing and improving IPC products and services and related technology.

6 CONFIDENTIALITY

6.1 General.

- (a) Each party shall keep confidential any Confidential Information disclosed to it by the other and shall only use Confidential Information for the purpose for which it was disclosed. For the avoidance of doubt, IPC Confidential Information includes (i) the terms and conditions of this Agreement, (ii) the Proprietary Software, and (iii) all Documentation, Product specifications and, subject to Section 6.1(c) other materials IPC provides to Customer regarding Cloud Services or Services.
- (b) Neither party shall disclose any of the other party's Confidential Information to anyone else except to those of their employees, contractors and suppliers who need the information in order to enable the party concerned to carry out any of its obligations under this Agreement or exercise any of its rights under this Agreement. Each party shall be responsible for ensuring that any person to whom the other party's Confidential Information is disclosed by them complies with any conditions of confidentiality applying to the information concerned under this Agreement.
- (c) The obligations of confidentiality in this Agreement do not apply to any information that (i) is generally available to the public, unless this availability results from a breach of this Agreement; (ii) the party receiving the information already possesses or which it obtains or originates independently in circumstances in which that party is free to disclose it to others; or (iii) is required to be disclosed by any court or tribunal that is authorized to order its disclosure, provided that such party required to disclose the information will, unless prohibited by law, notify the other party in writing in order to give the other party an opportunity to seek an injunction or other suitable protection (as available).

6.2 Customer Data.

- (a) Access and Confidentiality. IPC will not access or use Customer Data beyond the scope authorized by Customer, will process and use the Customer Data only to perform its obligations under the Agreement, and will disclose it only to IPC personnel who have a need to know and are bound by confidentiality obligations not less restrictive than those contained in this Agreement. Notwithstanding the foregoing, the Customer (i) expressly grants IPC permission to export the Customer Data outside of the Territory; and (ii) acknowledges and accepts that the Customer Data will be stored in an IPC Data Centre which may be located outside of the Territory.
- (b) Protection. With regard to any Customer Data to which IPC is given access by Customer, IPC will (i) comply with applicable laws governing the protection of personally identifiable information; and (ii) use the Customer Data solely for the performance of IPC's obligations under this Agreement.
- (c) Subcontractors. Customer acknowledges and agrees that IPC may use subcontractors in connection with provision of the Cloud Services, which includes the processing of Customer Data by such subcontractors. Subcontractors will only be allowed to process Customer Data to the extent necessary to provide or maintain the Cloud Services, and subcontractors will not be permitted to

process Customer Data for any other purpose. IPC remains responsible for any acts or omissions of a subcontractor which cause IPC to be in breach of its obligations under this Agreement.

- (d) IPC will enter into a written agreement with any subcontractors with access to Customer Data which require the subcontractor to comply with contractual obligations no less protective than those set out in this Agreement.
- (e) Notwithstanding clause 6(e) above, IPC shall delete the Customer Data in accordance with the Customer's instructions and may, in its sole discretion, delete the Customer Data at the end of the Trial Period.

7 INDEMNITY

7.1 **Infringement.** IPC shall indemnify Customer against any loss, damage, or expense (including reasonable attorney's fees and legal costs) which Customer incurs or becomes liable for as a result of any claim that the possession or use by Customer in accordance with this Agreement of the Equipment, Proprietary Software or (when used in conjunction with the Equipment or Proprietary Software) Open Source Software infringes the Intellectual Property Rights of any third party. This indemnity will not apply to the extent that the relevant infringement results from:

- (a) modification of any relevant Cloud Services by any party other than IPC or its agents;
- (b) failure to use updated or replacement Cloud Services, the use of which would have avoided the infringement;
- (c) the use of information, documents, facilities or items supplied for the purposes of this Agreement by a party other than IPC and its suppliers.

7.2 The indemnities set out in Section 7.2 is IPC's sole obligation and Customer's sole remedy for claims of infringement

7.3 The indemnities set out above are conditional on Customer seeking indemnity:

- (a) notifying IPC as soon as is reasonably practicable of any claim or knowledge of an intended claim;
- (b) at IPC's request and expense, allowing IPC to conduct the defence of the claim (including settlement);
- (c) making no admission in relation to the claim without the prior written consent of IPC; and
- (d) co-operating and assisting to a reasonable extent with IPC defence of the claim.

8 LIMITATION OF LIABILITY

8.1 Neither party's liability for death or personal injury caused by its negligence or the negligence of its employees or agents, for fraudulent misrepresentation or for any liability which may not be limited or excluded by applicable law, is excluded or limited by this Agreement, even if any other term of this Agreement would otherwise suggest that this might be the case.

8.2 Subject to clause 8.1, IPC does not accept any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any, loss of profits, loss of sales, loss of turnover, loss of or damage to business or reputation; loss of, or loss of use of, any software or data or any indirect, special or consequential loss or damage (and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss).

8.3 Subject to clauses 8.1 and 8.2, IPC's liability arising from or in connection with this Agreement and in relation to anything which IPC may have done or not done in connection with this Agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to USD\$60,000.

8.4 All of the terms that have been agreed between the parties in relation to this Agreement are contained in this Agreement. The parties do not intend any other terms to apply unless they specifically in writing

agree otherwise. Each party acknowledges that, in entering into this Agreement, it has not relied on any representation made by the other party that has not been set out in this Agreement and agrees that it will not try to rely on any representation made by the other party except to the extent that the representation concerned is contained in this Agreement.

8.5 No conditions, warranties or other terms apply to any of the Cloud Services, or anything else supplied under this Agreement except to the extent that they are expressly set out in this Agreement. Subject to clause 8.1, no implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

9 TERM AND TERMINATION OF THE TRIAL PERIOD

9.1 Unless set out in the Order, the term for this trial is 21 calendar days from the date the Cloud Services are made available to Customer. This Agreement will then terminate automatically ("Trial Period").

9.2 Upon termination of the Trial Period, Customer shall promptly return all Software, Hardware and Documentation related to the Cloud Services to IPC in the same condition in which they were installed, fair wear and tear excepted. IPC may charge the Customer in accordance with IPC's then current standard list prices for any Equipment that has been subject to excessive wear and tear.

9.3 In the event Customer wishes to purchase the Cloud Services, Customer and IPC shall negotiate a mutually acceptable agreement governing the license of Cloud Services.

10 RESTRICTION AND LIMITATIONS

10.1 Customer will not, and will not permit any of its employees independent contractors or any third parties to: (i) change, modify, or otherwise alter any Cloud Services; (ii) notwithstanding the foregoing, use the Cloud Services (a) for the benefit of any party other than Customer or grant any third party access to or use of the Cloud Services whether on a service bureau, timesharing, subscription service, rental, application service provider basis or otherwise; (b) to make telemarketing calls or other unsolicited marketing communications to any third party; (c) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates of third party privacy rights; (d) to store or transmit material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) in violation of applicable Laws or agreements with Customer's clients; or (f) use in a live trade environment; (iii) allow anyone other than the appointed customer representatives (for whom the Customer shall be responsible) to use the Cloud Services; or (iv) misuse or abuse the Cloud Services, or interfere with or disrupt the integrity or performance of the Cloud Services or any related data.

10.2 **IPC Ownership.** As between the parties, IPC owns all right, title and interest in and to (a) the Cloud Services, Software and Equipment, (b) any software or other work product resulting from the performance of Cloud Services; and (c) any modifications, translations, or derivatives of the foregoing prepared by or for IPC, including in each case all Intellectual Property Rights therein and thereto.

10.3 **Open Source Software.** If and to the extent any Open Source Software is provided in connection with any Cloud Services: (i) IPC is providing the Open Source Software on a royalty-free basis; (ii) Customer's rights regarding the Open Source Software, including the right to obtain copies of the source code, will be governed by the licenses therefor as published in the IPC Cloud Services Portal or otherwise provided to Customer upon request; (iii) any obligations IPC undertakes under the Agreement regarding the Open Source Software are the obligations of IPC and not the authors, contributors or licensors of such software; and (iv) except as the parties otherwise expressly agree in writing, IPC's inclusion of Open Source Software in or with the Equipment and/or Services will not give rise to an obligation by Customer to disclose source code for the Proprietary Software of Customer or Customer's other vendors.

11 GENERAL

11.1 This Agreement (including the Schedules and Exhibits) constitutes the entire understanding between the parties with regard to its subject matter. No modification, amendment or waiver shall be binding unless made in a writing that expressly refers to this Agreement and that is signed by each party.

- 11.2 Neither party shall be liable for any delay or failure in performing any of its obligations under this Agreement, if such delay or failure is caused by circumstances outside the reasonable control of the party concerned (including any delay caused by any act or default of the other party).
- 11.3 No delay or failure on the part of either party in the exercise of any right granted under this Agreement or available at law or equity shall be construed as a waiver of such right. All waivers must be in writing.
- 11.4 The provisions of this Agreement are severable and the unenforceability of any provision shall not affect the enforceability of any other provision. In the event that any provision of this Agreement is determined by a court to be invalid or unenforceable as drafted, the parties acknowledge that it is their intention that such provision shall be construed in a manner designed to affect the purposes of such provision to the maximum extent enforceable under applicable law.
- 11.5 This Agreement is to be interpreted in accordance with the laws of the State of New York. In relation to any disputes arising from or connected with this Agreement, the parties submit to the exclusive jurisdiction of the courts of New York.
- 11.6 Neither party may assign any right or obligation under this Agreement without the express written consent of the other party.
- 11.7 The provisions of this Section 11 and of Sections 7.1 and 8 shall survive any expiration or termination of this Agreement.
- 11.8 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
- 11.9 In the event IPC determines, in its sole but reasonable discretion, that Customer has or is about to breach any of the terms of this Agreement, IPC may terminate this Agreement upon giving five (5) business days' prior written notice to Customer and obtain or enforce any legal or equitable remedy or remedies available to IPC.