

UNIQUE

TERMS OF USE

Important, read carefully: your use of and access to the service (and associated software) (collectively, the "**Service**") of Unique AG and its affiliates ("**Unique**") is conditioned upon your compliance with and acceptance of these terms. Please review thoroughly before accepting.

By clicking the "I agree" button/box on the Unique website or in the Order Form, accessing the Unique website or by utilizing the Service (e.g. Unique App) you agree to be bound by these terms and conditions, the Order Form(s) and the Privacy Policy (accessible via <https://www.unique.ch/privacy>, collectively with the Unique Data Processing Addendum ("**DPA**") (accessible via <https://www.unique.ch/data-processing-addendum>) and the Standard Contractual Clauses ("**SCC**") (accessible via <https://www.unique.ch/standard-contractual-clauses>), the "**Agreement**").

Unique will provide the Service, and you may access and use the Service, in accordance with this Agreement. If you order the Service through an online registration page or an order form (each an "**Order Form**"), the Order Form may contain additional terms and conditions and information regarding the Service you are ordering.

1. THE SERVICE

- 1.1 The Service is a cloud-based sales conversation intelligence platform. It is designed to enable you to record, transcribe, analyze and share your sales team's audio and video calls, online demos and email conversations (together with all other information data that you make accessible to Unique, "**Content**").
- 1.2 Unique provides you a right and permission to use the Service subject to a valid subscription, pursuant to the terms of the Order Form, or subject to free evaluation terms, as further detailed below.
- 1.3 Upon your subscription to the Service, Unique will grant you access to the Service or certain parts of it, which will allow Unique or you to add end-user accounts ("**Permitted Users**") and to control or manage certain features of the Service. Permitted Users' access to the Service is limited and personal. You are responsible for actions taken by Permitted Users or by anyone using your accounts and passwords.
- 1.4 Unique uses commercially reasonable efforts to maintain the highest Service availability. However, Unique cannot guarantee that the Service will operate in an uninterrupted or error-free manner. Unique performs Service maintenance and uses commercially reasonable effort to schedule system down-time to off-peak hours and to avoid service interruptions and delays.

2. EVALUATION PERIOD

Unique may make the Service or any part of it available to you on an evaluation basis until the earlier of (i) the end of the applicable evaluation period, (ii) your purchase of a subscription, or (iii) any termination of the evaluation by Unique in its sole discretion.

Any data you enter into the Services, and any customizations made to the Services by you or for you, during your evaluation period will be permanently lost unless you purchase a subscription to the same Services as those covered in the evaluation period, purchase applicable upgraded Services, or export such data, before the end of the evaluation period. You cannot transfer data entered or customizations made during the evaluation period to a Service that would be a downgrade from that covered during the evaluation period; therefore, if you purchase a Service that would be a downgrade from that covered

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during the evaluation period, you must export your data before the end of the evaluation period or your data will be permanently lost.

3. DATA SECURITY

Unique will maintain reasonable physical and technical safeguards to prevent unauthorized disclosure of or access to Content, in accordance with industry standards. Unique will notify you if it becomes aware of unauthorized access to Content. Unique will not access, view or process Content except (a) as provided for in this Agreement; (b) as authorized or instructed by you, (c) as required to perform its obligations under this Agreement; or (d) as required by applicable law. Unique has no other obligations with respect to Content.

4. YOUR UNDERTAKINGS

- 4.1 You assume full responsibility for you and your Permitted Users' use of the Service in accordance with this Agreement and with applicable local, state, federal, national and international laws, regulations and treaties, and warrant that you have obtained all rights in the Content to authorize Unique to inter alia input, process, distribute and display the Content as contemplated by the Agreement.
- 4.2 You will not, and ensure that your Permitted Users will not, use the Service or Content for any use or purpose that: (i) is obscene, libelous, blasphemous, defamatory, inciting hatred, terrorism or any similar offence; (ii) infringes or misappropriates the intellectual property rights or violates the privacy rights of any third party (including without limitation, copyright, trademark, patent, trade secret, or other intellectual property right, moral right, or right of publicity); (iii) is in violation or may encourage any manner of acting that would violate any applicable local, state, national and foreign laws, treaties and regulations; or (iv) may drive or encourage any third party to do any of the above.
- 4.3 You will not, and will ensure that your Permitted Users will not: (i) use the Service for non-business calls or abuse the Service; (ii) sell, resell, transfer, sublicense, grant others permission to use the Service, pledge, lease, rent, or share your rights under this Agreement (including without limitation to any of your affiliates); (iii) modify, remove or amend Unique's name or logo, update, reproduce, duplicate, copy all or any part of the Service; (iv) make any of the Service or Content available to anyone other than your employees and consultants for use for your benefit as intended pursuant to this Agreement, or use any Service or Content for the benefit of anyone other than you; (v) use the Service in any way that restricts or inhibits the use of the Service; (vi) access or attempt to access any of Unique's systems, programs or data that are not made available for public use, or attempt to bypass any registration processes on the Service or any of the Service's security and traffic management devices; or (vii) attempt to decompile, disassemble, re-engineer or reverse engineer the Service or otherwise create or attempt to create or permit, allow, or assist others to extract source code of the Service, its structural framework or allow or facilitate a third party, to violate or infringe any rights of Unique's or others or Unique policies or the operational or security mechanisms of the Service.
- 4.4 If you receive notice that Content, data or a third-party service must be removed, modified and/or disabled to avoid violating any of the clauses set out in Sections 4.2 and 4.3, you will promptly do so. If you do not take required action in accordance with the above, or if in Unique's judgment a continued violation is likely to reoccur, Unique may disable the applicable Content, Service and/or third-party service. If requested by Unique, you shall confirm such deletion and discontinuance of use in writing and Unique shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if Unique is required by any third-party rights holder

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to remove Content or data, or receives information that Content or data provided to you may violate applicable law or third-party rights, Unique may discontinue your access to Content through the Services.

- 4.5 When using the Service in conjunction with other third-party services, you will comply with the terms of service of such third-party services. Unique shall not be liable for any termination, breach of terms or suspension of service resulting from your use of the Service.
- 4.6 You may not access or use the Service if you are a competitor of Unique, or for monitoring the Service's availability, performance or functionality, or for any other benchmarking or competitive purposes.

5. SUBSCRIPTION FEES

- 5.1 In consideration for the right to use the Service under the terms herein, you will pay subscription fees in the amount and payment terms under the applicable Order Form (the "Subscription Fees"). You agree that in the event Unique is unable to collect the Subscription Fees owed to Unique for the Service, Unique may take any other steps it deems necessary to collect such fees from you and that you will be responsible for all costs and expenses incurred by Unique in connection with such collection activity, including collection fees, court costs and attorneys' fees. You further agree that Unique may collect interest at the highest amount permitted by law on any amounts not paid when due. Except to the extent otherwise expressly stated in this Agreement or in an Order Form, all obligations to pay Subscription Fees are non-cancelable, all payments are non-refundable and the quantities purchased cannot be decreased during the relevant Subscription Term. During the Subscription Term and any renewal Subscription Terms, you may choose to cancel your Subscription early, provided that, Unique will not provide any refunds and you will promptly pay all unpaid Subscription Fees due through the end of the Subscription Term.
- 5.2 Your Subscription Fees are exclusive of taxes, levies, duties or similar governmental assessments of any kind. You will be responsible for paying any and all such taxes.
- 5.3 Unique reserves the right to modify the Subscription Fees for the Service under one or more Order Forms, effective upon commencement of the next renewal Subscription Term of the relevant Order Form(s), by notifying you of such change in writing at least 30 days before the end of the then-current Subscription Term.
- 5.4 You will provide Unique with valid and updated credit card information or a document reasonably acceptable to Unique. If you provide credit card information to Unique, you authorize Unique to charge such credit card for all subscriptions listed in the Order Form for the initial Subscription Term and any renewal Subscription Term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Unique will invoice you in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Unique and notifying Unique of any changes to such information.
- 5.5 If any charge owned by you under this Agreement for Services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts you have authorized Unique to charge to your credit card), Unique may, without limiting its other rights and remedies, accelerate your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for you paying by credit card or direct debit whose payment

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has been declined, Unique will give you at least 10 days' prior notice that your account is overdue, before suspending Services to you .

- 5.6 If this Agreement is terminated by Unique, you shall pay any unpaid fees covering the remainder of the Subscription Term of all Order Forms. In no event will termination relieve you of your obligation to pay any fees payable to Unique for the Subscription Term prior to the effective date of termination.

6. PROPRIETARY RIGHTS / YOUR FEEDBACK

- 6.1 All parts of the Service are protected by copyrights, trademarks, service marks, patents or other proprietary rights, as a collective work or compilation, pursuant to laws and international conventions. Except for your Content, all rights to the Service and derivatives thereof are retained by Unique. In addition, Unique retains all rights to aggregated and anonymous data derived from your use of the Service.
- 6.2 Unique makes no claim of ownership as to your Content, the trademarks of any third party linked or displayed on the Service, or with respect to any publisher or publication mentioned on the Service.
- 6.3 You grant Unique a worldwide, unlimited-term license to host, copy, use, transmit, and display any program code created by or for you using a Service or for your use with the Services, and customer data, each as appropriate for Unique to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement.
- 6.4 In the course of using the Service, you or your Permitted Users may provide Unique with feedback and suggestions regarding the Service. You hereby assign to Unique ownership in all such feedback and suggestions and all rights therein, without any royalty or accounting obligations to you.

7. LINKS TO OTHER WEBSITES AND APPLICATIONS

The Service contains links and references to websites and applications of others. Unique may, from time to time, at its sole discretion, add or remove links. Unique has no control over these third-party websites and applications, Unique does not endorse, sponsor or confirm their content and Unique is not responsible or liable for any communication or transaction that you make with them.

8. WARRANTIES / DISCLAIMER

- 8.1 You represent, warrant and covenant to Unique that: (a) you have the full corporate right, power and authority to enter into and perform this Agreement, and such execution and performance does not and will not violate any other agreement to which you are a party, and (b) this Agreement constitutes your legal, valid and binding obligation.
- 8.2 The Service, when used in accordance with this Agreement, will perform in all material respects as specified in Section 1 above. Your sole and exclusive remedy under such warranty shall be for Unique to use commercially reasonable efforts to correct or to replace the affected Service with a component or service of similar functionality. The above warranty is conditioned upon you notifying Unique in writing within 30 days of discovery of any alleged defect in the Service together with a documented example of such defect. This warranty shall not apply to any portion of the Service that (a) have been subject to abuse or misuse, (b) is used in combination with any other products, process, equipment or software not furnished by Unique, (c) is related to a virus, worms and the like that has not been introduced by Unique, or (d) was used without authorization.
- 8.3 Except as expressly provided above, to the fullest extent permitted by applicable law, Unique expressly disclaims all warranties of any kind, whether express or implied,

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including but not limited to the implied warranty of merchantability, fitness for a particular purpose and non-infringement. Without limiting the above, Unique makes no warranty whatsoever with respect to (i) the Service meeting your requirements, or being uninterrupted, continuous timely, or error or virus free; (ii) whether your use of the Service or the Content will generate any results or consequences; or (iii) whether your use of the Service is lawful in any particular jurisdiction.

- 8.4 Notwithstanding, during an evaluation period, Unique provides the Service "as is" and "as available", without any warranties and representations.

9. PRIVACY AND OTHER POLICIES

Use of the Service is also subject to Unique's Privacy Policy. The Privacy Policy at (accessible via <https://www.unique.ch/privacy>) is incorporated into this Agreement by this reference. Additionally, you understand and agree that Unique may contact you via e-mail or otherwise with information relevant to your use of the Service, regardless of whether you have opted out of receiving marketing communications or notices.

10. CONFIDENTIALITY

- 10.1 "Confidential Information" means all information provided by a party to other party, whether orally, electronically or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, and excluding any information that was or has become publicly available without the receiving party's actions or inactions. Unique's Confidential Information includes, without limitation, the Service's features, functionality and performance and your view of the Service. Your Confidential Information includes the Content.

- 10.2 Each party will hold the other party's Confidential Information in strict confidence, use it only subject to the terms of this Agreement, allow its use only by the receiving party's employees and consultants who have signed in advance a confidentiality agreement containing terms similar to this Agreement and on a need-to-know basis and pursuant to the terms of this Agreement, not make the other party's Confidential Information available to any third party unless to the extent required by applicable law, implement adequate security measures to ensure against unauthorized access to, copying or use of the other party's Confidential Information (whereby Unique is entitled to use the Content for the further development of the Service), and notify the other party in writing of any misuse of misappropriation of the other party's Confidential Information of which the receiving party may become aware; in each case without derogating from the terms of the Privacy Policy.

11. TERM AND TERMINATION

- 11.1 The initial Subscription Term of the Agreement will be as set forth and agreed by the parties in the Order Form.
- 11.2 Either of you and Unique may terminate this Agreement if the other party (i) materially breached this Agreement and has not cured such breach within 30 days after receiving notice (if curable), without prejudice and in addition to any right or remedy that the non-defaulting party may have under this Agreement or the applicable law, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 11.3 At the end of the initial subscription term, all your subscriptions (including any additional subscriptions added to your account) will renew automatically for terms equal in length to the preceding subscription term unless you or Unique notifies the other in writing, at least 30 days prior to the end of the then-current subscription term, that it chooses not to renew (initial subscription term, with any renewal subscription terms, the "Subscription Term").

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- 11.4 Upon termination or expiration of this Agreement; (a) you will cease use of the Service and all rights granted to you under this Agreement will terminate; (b) upon written request, Unique will make your recorded calls available for you to download, or export within 30 days following such termination, and (c) Sections 4.1, 5, 6, 8, 10, 11 through 14 and 16 through 18 survive termination of the Agreement. Thereafter, Unique will be under no obligation to maintain your recorded calls, or make them available to you and Unique may delete any of your Content.

12. LIMITATION OF LIABILITY / FORCE MAJEURE

To the fullest extent permitted by law, (i) under no circumstances will either party be liable for any indirect, incidental, special, exemplary or consequential damages; in each case, including but not limited to, damages for loss of profits, even if the parties have been advised of the possibility of such damages, whether based on contract, tort, negligence, strict liability or otherwise; and (ii) excluding liability for a breach of section 10, your payment obligations and indemnification obligations under section 14, either party's aggregate liability to the other party arising out of or related to this Agreement or the Service will not exceed the fees actually received by Unique from you under this agreement during the 12 months preceding the applicable claim. The above limitations will apply notwithstanding any failure of essential purpose of any limited remedy and are fundamental elements of the bargain between the parties.

Neither party will be deemed to be in breach of this Agreement for any failure caused by reasons beyond a party's reasonable control (including without limitation acts of God, pandemic, acts of terror, war or civil disturbance), and it will notify the other party as soon as practicable in writing of such failure.

13. LIMITATION OF CLAIMS

Any claim or cause of action arising out of or related to the use of the Service or to the Agreement must be filed within one year after such claim or cause of action arose, or be forever barred.

14. INDEMNIFICATION

- 14.1 You will indemnify, defend and hold harmless Unique, its officers, directors, employees, agents and affiliates, from and against all losses, liabilities, claims, obligations, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claims with respect to your use of the Service, including without limitation your Content and any claims against Unique by your employees, users, consultants, customers, service providers or the like in connection with their use of the Service.

- 14.2 In all events, you will cooperate with Unique in the defense of any claim.

15. COPYRIGHT PROTECTION – DIGITAL MILLENNIUM COPYRIGHT ACT

- 15.1 Unique respects the rights of copyright owners and expect Unique users to the same. If you are a copyright work owner or an agent thereof, and you believe any content submitted to and hosted on the Service infringes your copyrights, you may submit a notification pursuant to the U.S. Digital Millennium Copyright Act (“DMCA”) by providing the Unique Designated Copyright Agent with the following information in writing (“Notice”):

- 15.1.1 sufficient details to enable identification of the copyrighted work that has been allegedly infringed, if multiple copyrighted works are claimed to be infringed, a representative list of such works;
- 15.1.2 a description of where the content that you claim is infringing is located on the Service; your contact information at which you may be contacted (for example, your address, telephone number, and email address);

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- 15.1.3 a statement that you have a good faith belief that the use of the content identified in the Notice is not authorized by the copyright owner, its agent, or the law;
- 15.1.4 a statement, under penalty of perjury, that the information in the Notice is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is alleged to be infringed; and
- 15.2 Following receipt of your Notice, Unique will take whatever action as Unique deems appropriate, including removal of the challenged content from the Service. Unique may ask you to provide further or supplemental information, prior to removing any content, as Unique deems necessary to comply with the provisions of the DMCA. It is Unique's policy to respond only to Notices of alleged infringement that comply with the provisions of this section.
- 15.3 Unique's Designated Copyright Agent for notices of claims of copyright infringement may be reached as follows: privacy@unique.ch.

16. INJUNCTIVE RELIEF

You acknowledge that any use of the Service contrary to this Agreement, or any transfer, sublicensing, copying or disclosure of technical information or materials related to the Service, may cause irreparable injury to Unique, its affiliates, suppliers and any other party authorized by Unique to resell, distribute, or promote the Service ("**Resellers**"), and under such circumstances Unique, its affiliates, suppliers and Resellers will be entitled to equitable relief, without posting bond or other security, including, but not limited to, preliminary and permanent injunctive relief.

17. GENERAL

- 17.1 The Services, Content, other Unique technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. You represent that you are not named on any U.S. government denied-party list. You will not permit any user to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.
- 17.2 This Agreement comprises the entire agreement between you and Unique, state Unique's and Unique's suppliers' entire liability and your exclusive remedy with respect to the Service, and supersede all prior agreements pertaining to subject matters of the Agreement and you specifically confirm that you have not entered into this Agreement relying on any oral or written public comments made by Unique regarding future functionality or features of the Service. The terms of any purchase order or similar document will have no effect and are hereby rejected.
- 17.3 In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) these Terms of Use, (3) the SCC and (4) the DPA.
- 17.4 No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
- 17.5 You and Unique are independent contractors with respect to each other, and nothing in this Agreement will be construed as creating a partnership, agency, fiduciary or employment relationship or a joint venture between you and Unique.
- 17.6 If this Agreement is or becomes of no legal force and effect, then the remaining provisions hereunder shall remain in full force and effect. The Parties undertake to replace any such ineffective provision with an effective provision that most closely approximates the purpose of the ineffective provision in economic terms. The foregoing shall apply *mutatis mutandis* in the event of gaps or omissions.

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17.7 All notices and other communications made or to be made under this Agreement shall be given in writing and dispatched to the other party by e-mail. Electronic signatures such as DocuSign are deemed to be valid signatures for the purposes of notices to be made under this Agreement.

18. GOVERNING LAW AND EXCLUSIVE COURTS

Unless the GDPR is mandatory, this Agreement shall be governed exclusively by Swiss substantive law, without regard to its choice of law or conflicts of law principles. You and Unique consent to the exclusive jurisdiction and venue in the courts in Zurich 1, Switzerland.

Last updated: November 03, 2021