Terms of Service Production (TOSP) for Unify Cloud Services
For End Customers obtaining access to Unify Cloud Services

Effective as of May 15, 2018

!!! For the current version effective till May 15, 2015 please scroll down !!!

We address you and your business or organization collectively as "You". Other capitalized terms used in the TOSP, are defined in Annex 1 - Definitions.

List of Annexes:

Annex 1 – Definitions

Annex 2 – Additional TOSP for Circuit

Annex 3 – Additional TOSP for OpenScape Cloud

Annex 4 – TOSP – Service Level Agreement (SLA)

Eligibility to sign up for Unify Cloud Services

Unify Cloud Services are Produced by Unify Software and Solutions GmbH & Co.KG ("Unify") and provided to you by your Contracting Party, which may either be Unify or a legal entity within Atos Group or a Reseller accredited by Unify. The liability and warranties provisions, exclusions and exemptions in these TOSP apply similarly to Unify and the Contracting Party You are contracting with.

Unify Cloud Services are offered only to businesses and organizations i.e. all natural or legal persons or a partnerships with legal personality who or which act in exercise of his, her or its trade, business or profession. Unify Cloud Services are not offered to other persons, in particular to consumers. In any case, a person less than 18 years old or who is considered a minor in its state or country of residence, cannot register for Unify Cloud Services or be signed up by You as a User.

If Unify reasonably believes that You or a User does not meet the above stated requirements, Unify may, directly or through your Contracting Party, without liability and at its sole discretion, (i) suspend or delete that User Account(s) and their User Data and/or any portion, aspect or feature of Unify Cloud Services, or (ii) as the case may require, elect to terminate, or request termination of the entire Cloud Services Agreement for cause with immediate effect.

The Unify Cloud Services Tenancy may also be suspended in its entirety or in parts without liability and without giving prior notice, if (a) it is reasonably determined that the End Customer or User has grossly

violated the provisions in these TOSP or (b) Unify is ordered to do so by a court or authority in any country.

Upon such suspension, access to all of the End Customer's Users and User Data may be deactivated or barred, without any refund or compensation being granted to You.

You agree that any person of your business or organization, who is granted access to your Unify Cloud Services Tenancy, is bound by these TOSP and the documents referenced herein.

1.   Welcome to Unify Cloud Services!

1.1   Unify offers cloud services, such as Circuit and OpenScape Cloud (the "Unify Cloud Services"). Unify Cloud Services are constantly improved and further developed.

1.2   Your Contracting Party may offer You a comprehensive solution which consists of Unify Cloud Services and additional technical solution and service elements. Such solutions may include hardware which can be used in conjunction of the Unify Cloud Services, solutions behind Unify Cloud Services interfaces and connectors, carrier services or managed services. These TOSP on Unify Cloud Services only covers the functionality and services described in the **Annex - Product and Service Description (PSD)**. You may either have separate agreements with your Contracting Party on the additional solution elements or a single agreement on the entire solution into which these TOSP is embedded.

2.   Signing up for Unify Cloud Services

2.1   To sign up for Unify Cloud Services, You must complete a registration process and provide current, complete and accurate information, as prompted by the registration form. If You act for a business or organization, You may need, depending upon the legal jurisdiction in which your business or organization operates, to conclude the Data Processing Agreement (DPA).

2.2   The registration for Unify Cloud Services, through the Contracting Party will result in a binding proposal from your business or organization to the Contracting Party to enter into a Cloud Services Agreement. You will be informed if your proposal is accepted via direct email or through your Contracting Party. Your Contracting Party and Unify are free to accept or deny any such proposal at their sole discretion. If it is accepted, the Cloud Services Agreement becomes effective, and if it is rejected, there is no Cloud Services Agreement and neither you nor the Contracting Party nor Unify will have any liability against any other party.

2.3   Once your proposal has been accepted, You and any User you create through the Unify Cloud Services administration console will be given a username and password via email, which, upon initial access, must be changed to a password known only to such User. You/the User must ensure that the password(s) do (es) not become known to unauthorized third parties. In the event You reasonably suspect that the password(s) have been compromised, You must notify Unify or the Contracting Party without delay. You are liable for all damages due to your fault to maintain the confidentiality of the passwords.

2.4   The first User that is created for your business or organization during the sign up process will hold the roles of Tenancy Administrator and of Customer Contact.

3.   Feedback about Unify Cloud Services

Unify will own any information and data that You/Users will provide about the tests they have done, the test results, and other material such as screenshots, recordings, concepts, etc. (collectively, "Feedback"). You hereby assign and grant Unify all rights, title and interest in the Feedback and all Intellectual Property Rights herein, including the right to use, share, and commercialize the

Feedback in any way and for any purpose. You will not give any Feedback that is subject to a license that requires Unify or your Contracting Party to grant any rights (e.g. Freeware and Open Source License) or make any payments to third parties because the Feedback was incorporated into Unify Cloud Services or the Documentation or any other of Unify's products, software, or services or other items. These rights shall survive the Cloud Services Agreement with your Contracting Party.

4. Right to Use and Handling of User Data

4.1   By signing up for Unify Cloud Services and submitting User Data to Unify Cloud Services, You agree, for the term of the Cloud Services Agreement, that such User Data are used, modified, processed, reproduced and distributed by the Unify Cloud Services Service, solely for the purpose of providing Unify Cloud Services to You and the Users You appoint. This includes the public performance or public display of the User Data, where such facilities are provided within or through Unify Cloud Services and if effected by You.

4.2   You must have all the rights, licenses, and permissions required from third parties to use the User Data and to reproduce, publish, and display User Data within and outside of Unify Cloud Services.

The Unify Cloud Services service is only acting as a passive conduit for your Unify Cloud Services User Data. Neither Unify nor your Contracting Party claim any ownership rights in your User Data and will not review, share, distribute, or reference your User Data except as provided herein or in the **Acceptable Use Policy** (**"AUP"**) for Unify Cloud Services, or as this may be required by Applicable Laws.

4.3   If You object to any third party Unify Cloud Services user data, the procedure described in the **AUP will apply**. In the event such third party Unify Cloud Services User Data is found permissible under the AUP, your sole option shall be to cease using Unify Cloud Services. However, this does not constitute a right to prematurely terminate the Cloud Services Agreement nor to claim damages.

4.4   If You believe that your Accredited Reseller, Unify or any of their affiliates or a third party Unify Cloud Services User (including Guest Users) violated a copyright, please first notify your contracting party (being either Unify or its Accredited Reseller) of the potential copyright infringement before taking legal action. The provisions of the **AUP** shall apply.

4.5   You understand that publishing User Data on Unify Cloud Services is not a substitute for registering it with a copyright office or any other intellectual property rights organization such as, for instance and where applicable, the U.S. Copyright Office.

5. End-Customer's responsibilities for User Data

5.1   When using Unify Cloud Services, You must at all times comply with all Applicable Laws, including, but not limited to: (a) with respect to Personal Data, all applicable privacy laws and regulations and (b) laws or regulations relating to the recording of communications, including, when required, advising all participants in a recorded Unify Cloud Services audio or video conversation or meeting that it is being recorded and that (c) User Data and Personal Data may be transferred outside the European Economic Area and the US. It is your responsibility to ensure that you have the right to use Unify Cloud Services where you are located, as well as where your meeting invitees are located.

5.2   You are entirely responsible for any and all activities that occur under your Unify Cloud Services Accounts and with your User Data. With your subscription to Unify Cloud Services, You acknowledge and consent and You will make all of your Users including Guest Users acknowledge and consent, that all User Data is in your sole responsibility.

User Data may be accessible by the Tenancy Administrator. If a User is deleted, the User Data of that User may still be accessed by other Users who shared a Conversation with that User.

5.3   You will indemnify, defend and hold harmless your Contracting Party and Unify from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from your violation of clauses 4 (Right to Used and Handling of User Data), 5 (End Customer's responsibilities for User Data) and 6 (Data Privacy).

6.   Data Privacy

6.1   By using Unify Cloud Services, You and each of your Unify Cloud Services Users will upload, create or receive Unify Cloud Services User Data containing Personal Data. Unify, as the Producer of Unify Cloud Services, is very serious about the safety and security of such Personal Data.

6.2   Unify will produce Unify Cloud Services through personnel who are bound to data secrecy as defined by Applicable Law.

6.3   With regard to the Personal Data stored or otherwise Processed by Unify Cloud Services, when entering into the Cloud Service Agreement with your Contracting Party, You will also enter into the **Data Processing Agreement (DPA)** directly with Unify, which is based on a Joint Controller model. The execution of this DPA is mandatory. Unify will not provide contracted Unify Cloud Services without executed DPA.

6.4   Unify will Process Personal Data obtained from You only for the purposes of producing Unify Cloud Services and shall delete such Personal Data from Unify's systems if it is no longer needed for that purpose, subject to any data retention obligations required by Applicable Laws.

6.5   Unify may use subcontractors to Produce Unify Cloud Services according to the **Data Processing Agreement (DPA)** and follow a standard that meets or exceeds the standard provided for in the **Data Privacy Statement (DPS)** which is posted on the Unify Cloud Services portal on your Accredited Resellers website.

6.6   Unify and your Contracting Party do not have control over, and are not responsible for, the protection of any Unify Cloud Services User Data that you have shared with others, so always use caution when giving out any Unify Cloud Services User Data that may contain Personal Data or other sensitive information. You agree to meet all statutory required preconditions for your intended use of Unify Cloud Services and the Unify Cloud Services User Data for which You are responsible, e.g. by obtaining consent from employees so that in this regard Unify Cloud Services can be provided to You without You infringing any Applicable Laws. You are in particular responsible for observing your workers council rights of co-determination, where applicable. You and your organization shall indemnify Unify from all claims and damages resulting from your failure to do so.

6.7   More details on Unify's data protection measures can be found in the **Data Privacy Statement (DPS)** which must be presented to each single Unify Cloud Services User at their first login and can be accessed from within Unify Cloud Services at any time.

6.8   Where required by Applicable Law, if You represent an organization that signs up several Unify Cloud Services Users for Unify Cloud Services (Customer), you acknowledge and accept that primarily the **Data Processing Agreement (DPA)** shall determine your data privacy relationship with Unify.

You hereby also agree that the terms of the DPA, where applicable, and the DPS shall apply to each of your organization's Unify Cloud Services Users, and that you will take appropriate measures to ensure these terms are binding upon them.

7. Security

7.1 You are entirely responsible for maintaining the confidentiality of all of your passwords and Unify Cloud Services Accounts, in particular with regard to the Tenancy Administrator. None of your Users may use any other User's Unify Cloud Services Account at any time without the permission of the affected User.

7.2 You must know the identity of any User you sign up or invite, including Guest Users. You may not permit parties that are unknown to you or who have not identified themselves to use Unify Cloud Services. Failure to do so may result in blocking access to single Unify Cloud Services Accounts or, in serious cases, of your entire access to Unify Cloud Services.

7.3 You agree to notify Unify or your Contracting Party immediately of any unauthorized use of your Unify Cloud Services Accounts or any other breach of security. Neither your Contracting Party nor Unify will be liable for any loss that You may incur as a result of someone else using your passwords or Unify Cloud Services Accounts, either with or without your knowledge. You acknowledge and agree that in such an event You could in turn be held liable for losses incurred by Unify, your Contracting Party or another party due to someone else using your Unify Cloud Services Accounts or passwords.

8. Local availability may be limited

Unify Cloud Services may not be available in, or accessible from, all countries or for use in a particular location. You are responsible for following the Applicable Laws in your jurisdiction, state or country and must not use Unify Cloud Services, if such use would result in a breach of Applicable Law. Unify reserves the right to modify or disable features and functionalities of Unify Cloud Services and/or any related services, if required to comply with local Applicable Laws. In some cases some of your Unify Cloud Services Users may need to use a separate instance of Unify Cloud Services. Unify has the right to block access to Unify Cloud Services from certain countries or jurisdictions. Such limitation or modification or disablement does not entitle You to prematurely terminate the Cloud Services Agreement.

Please contact your Contracting Party, for the latest list of countries in which Unify Cloud Services is available, and to learn about any functional variations applicable in certain countries or jurisdictions.

9. License, Copyright and Ownership of Unify Cloud Services

9.1 Subject to these TOSP, You are granted, effective upon confirmation of acceptance of your subscription application, and then for each version of Unify Cloud Services that is made available to You under the Cloud Service Agreement, a worldwide, revocable (pursuant to any termination of the Cloud Services Agreement), non-exclusive, royalty-free and non-transferable right under our Intellectual Property Rights to access and use Unify Cloud Services from any technically compatible device that is controlled by your organization.

9.2 Save for the rights granted in clause 9.1 above, all title to and all Intellectual Property Rights in Unify Cloud Services, including but not limited to all modifications thereto, be they based on Feedback or not, shall remain the exclusive property of Unify and shall not be used in any way other than as described herein. You acknowledge that Unify Cloud Services and all Intellectual Property Rights with respect thereto are and will at all times be the property of Unify, even if suggestions made by you, e.g. as part of Feedback, are incorporated into subsequent versions of Unify Cloud Services.

9.3 You do not have any rights to disclose, sublicense, or otherwise transfer access to Unify Cloud Services or any software that may be made available to You for download as part of your

subscription to Unify Cloud Services, or the related documentation, or other of Unify's proprietary information. You may not sub-rent or sub-lease Unify Cloud Services to any third party, including any of your Affiliates, unless explicitly agreed in writing with Unify or your Contracting Party. You may not reverse engineer, reproduce, de-compile or disassemble Unify Cloud Services, except to the extent expressly permitted by Applicable Law. You agree not to claim or assert title to or ownership of Unify Cloud Services.

10.   Downloadable Software

10.1   In order to use some features of Unify Cloud Services, or to use Unify Cloud Services on some devices, You may have to download and install software, e.g. an app for a smartphone or tablet, or a plugin. Such software is licensed to You under these TOSP and, in addition, the terms of Unify's **End User License Agreement** (**EULA**) shall apply. In some cases, the software may contain third-party software components, e.g. commercial components, Freeware or Open Source Software, which may be subject to additional Third Party EULAs or Open Source Licenses, respectively. Such separate licensing terms shall prevail over the EULA. A copy of the EULA and the separate licensing terms is provided in the EULA section.

10.2   Any installation and use of the software is subject to your acceptance of those license terms.

10.3   The software shall only be delivered and licensed in object code form i.e. executable, machine-readable form. There is no claim to delivery of the source code. Insofar as the terms of Open Source Licenses provide for the provision of source code, Unify may make the source code available (a) by including it in the software delivery or (b) upon your request, send separate media in return for reimbursement of expenses, or (c) through Unify's website. Option (b) shall always be available, and covers the relevant Open Source Software used in the current version Unify Cloud Services and all preceding versions, going back to at least three (3) years.

10.4   You may copy such downloadable software for backup or archival purposes, or as part of using Unify Cloud Services, but for no other purpose. You may not remove or alter any copyright or proprietary notice. You may not reverse engineer, decompile or disassemble the software save where explicitly permitted by law or by applicable Open Source Licenses. Distribution within your business or organization by other means than Unify Cloud Services (e.g. internal software distribution system) is permitted only to the extent that downloadable software is distributed solely to and for the use of your Users.

11.   Product Defects

11.1   If there is a Defect in the Software (provided as a Unify Cloud Service), Unify will remedy such Defect provided that you notify Unify or your Contracting Party of such Defect at least in text form without undue delay and in any case not later than five (5) Business Days from your knowledge of the Defect.

11.2   You will render reasonable assistance free of charge, in particular by a prompt implementation of any work-around solution or the sending of logs In case you claim defects, which as per this TOSP cannot be considered as defects, e.g. because Unify is not responsible for the claimed defect or there is actually no defect, and you should have been able to recognize that with reasonable diligence when examining the claimed defect, Unify or your Contracting Party reserves the right to impose to a reasonable extent the costs incurred by Unify or by your Contracting Party to you.

11.3   Unify will decide, at their sole discretion, whether a workaround or a correction release of Unify Cloud Services will be provided.

11.4   With respect to Defects, your sole remedy is to claim a Service Level Credit to the extent set forth in the **Service Level Agreement** (**SLA**) with your Contracting Party for eligible subscription plans.

If the Defect is not remedied and materially impairs your use of Unify Cloud Services in accordance with the TOSP on an ongoing basis, You may terminate the Cloud Services Agreement without regard to the minimum term requirement. In this case, prepaid Fees (if any) shall be refunded to you on a *pro rata* basis i.e. from the time your termination becomes effective.

11.5 The provisions of this clause 11 are exhaustive with respect to claims based on Defects. Unify Cloud Services are otherwise provided "as is" and as available.

Save as explicitly described in the TOSP, Unify makes no warranties, either express, statutory or implied, including without limitation any implied warranties for merchantability fitness for a particular purpose or non-infringement of intellectual property rights.

This provision applies also to the Contracting Party.

Any delay in the performance of its obligations by Unify or your Contracting Party due to non-fulfilment of your obligations under these TOSP, shall be at your own cost and liability.

12. Intellectual Property Rights Indemnification

12.1 Unify will indemnify You against liability resulting from (a) a final judgment in proceedings brought by a third party against You that determines that a Unify Cloud Service infringes such third party's Intellectual Property Rights, or (b) a written settlement reached between You and the third party with respect to the infringement of Intellectual Property Right, provided that Unify gave prior written consent to the settlement, including reasonable costs incurred in connection therewith.

12.2 Unify may also, at its sole discretion and cost, procure from such third party the Intellectual Property Rights necessary to continue to provide a Unify Cloud Service to You; or modify or replace the respective part of the Unify Cloud Service with substantially similar functionality in order to avoid the infringement. If Unify fails to provide these remedies, either Party may terminate the Cloud Services Agreement without regard to any minimum term and You will be refunded any remaining prepaid Fees.

12.3 You will not acknowledge any alleged infringement. In the event You elect to cease using the affected part of a Unify Cloud Service, or the Unify Cloud Services altogether, to minimize the expected damages or for other good reasons, You will inform the third party that the cessation of use does not imply any acknowledgment of the alleged infringement.

12.4 Unify's obligation to indemnify You is subject to You (a) notifying your Contracting Party and Unify in writing as soon as reasonably possible of any suspected or alleged infringement, (b) not making any admission which is or may be prejudicial to Unify without Unify's prior written consent; (c) giving Unify the right to defend against the allegation, including the negotiation of a settlement prior ; (d) providing Unify with reasonable assistance in defending against the alleged infringement; and (e) permitting Unify to provide the remedies set forth in clause 12.2.

12.5 Unify's obligation to indemnify You shall be excluded to the extent that the alleged infringement is attributable to You and in particular if it is due to (a) misuse or any use of a Unify Cloud Service in a manner not authorized by or contrary to your Contracting Party's and Unify's instructions or for a purpose not reasonably contemplated by your Contracting Party and Unify; (b) the use of any component of a Unify Cloud Service in combination with any hardware equipment, system environment or third-party applications not specifically approved by your Contracting Party and Unify; (c) with respect to downloadable software and without limitation to your rights under Open Source Licenses, a modification thereof that was done without Unify's prior written consent; (d) use of a Unify Cloud Service outside the scope of the rights of use granted to You under the Cloud Services Agreement; (e) with respect to downloadable software, your failure to use corrections provided or recommended by your Contracting Party and Unify, including generally available corrections and security fixes for the underlying hardware equipment, third party software or system

environment; (f) any claims relating to a Standard; or (g) in any event where Unify or your Contracting Party followed a design or instruction furnished or given by You.

12.6   The provisions of this clause, paragraphs 12.1 to 12.5 are exhaustive with respect to claims related to an alleged or actual infringement of third-party Intellectual Property Rights. All other rights and remedies shall be excluded.

12.7   You shall defend and indemnify Unify against any losses, costs, expenses, demands or liabilities arising out of a claim by a third party alleging any infringement if (a) the claim arises from an event specified in clause 12.5; (b) the ability of Unify to defend against the alleged claim has been prejudiced by your failure to comply with any requirements of clause 12.4; or (c) the claim arises from the use of the Customer Network.

13.   Liability

13.1   Unify's liability whether by way of indemnity or otherwise for each event or connected series of events arising out of or in connection with the TOSP shall be limited to the lesser of (i) twenty five percent (25%) of the Agreement Value or (ii) one hundred thousand Euro (EUR 100.000). Unify's total aggregate liability under the Agreement shall be limited to an amount equal to fifty percent (50%) of the Agreement Value.

13.2   Unify shall not be liable for loss of profit, indirect damages, consequential damages, including loss of business, loss of contracts, interruption of business , expenditures incurred and rendered unnecessary , loss or corruption of User Data, or claims raised by a third party against You, unless otherwise specified in this Agreement

The exclusion of liability set forth in the paragraph above will apply regardless of the form of action, whether in contract, tort, strict product liability, or otherwise, even if Unify is advised in advance of the possibility of the damages in question and even if such damages were foreseeable, and even of your remedies fail of their essential purpose

13.3   Unify's liability for loss or corruption of User Data shall be limited to the time and cost for restoring the data from the regular, general backups of the Unify Cloud Services platform Unify makes as part of Unify's normal operations. It is otherwise your obligation to ensure that important User Data is not stored on Unify Cloud Services alone, and to provide for backups or copies of User Data on a regular basis. You will not use Unify Cloud Services as your sole means of storing such important data.

13.4   Nothing in the TOSP shall be construed to limit your, Unify's or your Contracting Party's liability for fraud or fraudulent misrepresentation, intentional acts or omissions, bodily injury, gross negligence as well as liability under a guarantee, or any mandatory Applicable Laws.

Those liability provisions will apply equally to your Contracting Party. For the avoidance of doubt, there shall be no cumulative nor joint liability between Unify and your Contracting Party.

13.5   Unless specified otherwise in your applicable service package, your claim to service level credits as per the **Service Level Agreement** (SLA) in this document shall become time barred six (6) weeks after the Incident occurred. Claims with respect to Defects shall become time barred twelve (12) months from their respective accrual.

14.   Term and Termination

14.1   If You submit your registration for the Unify Cloud Services subscription, the Cloud Services Agreement becomes effective on the date your registration is accepted, as indicated through the confirmatory email which will be sent to You, or through the confirmation by your Contracting Party. If you obtain Unify Cloud Services "offline", e.g. from one of your Contracting Party's sales

representatives, the Cloud Services Agreement becomes effective on the date it is signed by You and the Contracting Party or on the individually agreed date (each the "Effective Date").

14.2   The minimum term of a paid-for subscription from the Effective Date is defined by the Subscription Plan You selected. See **Product and Service Description (PSD)**.Thereafter, the term shall renew automatically for consecutive renewal terms (depending on the subscription plan, see PSD as well) until the Cloud Services Agreement is terminated with a notice period of three (3) months to the end of the minimum term or any extension term. A different minimum term may apply, depending on special offers.

14.3   Upon receipt of the termination notice, You will be provided with technical means by which You can download your Unify Cloud Services User's Unify Cloud Services User Data prior to the expiry of the Cloud Services Agreement, unless prohibited by Applicable Laws. In general, the download facility will be made available for up to thirty (30) days from expiry of the Cloud Services Agreement. Upon expiry of that period, all of your User Accounts will be completely removed together with all User Data that such Unify Cloud Services Users may have (still) stored in the respective Unify Cloud Service.

Upon the termination becoming effective, You will erase or otherwise destroy all copies of the downloadable software, including apps or plugins that You may have obtained through your subscription to Unify Cloud Services. With the exception of the download facility, You will also cease to use any part of Unify Cloud Services even if it should still be available to You.

Upon termination for good cause attributable to You, Unify may make access to the download technical means dependant on the payment of all outstanding fees, and prepayment of the fees for the relevant time during which the download technical means is to be provided.

14.4   Notwithstanding any minimum term commitment, Unify may declare a Unify Cloud Service to be end-of-life, with a prior one (1) year notice period.

15.   Changes to Unify Cloud Services and the TOSP

15.1   Unify may, at any time and at its sole discretion, further develop and expand Unify Cloud Services and may replace or update or extend certain functionalities of Unify Cloud Services by functionally equivalent functions. Unify may select and/or modify at its sole discretion the equipment, hardware, software including utilities and tools, telecommunications equipment and terminals, IT systems and other items including the associated documentation (e.g. operating instructions, application guides and specifications) and the configuration used to provide Unify Cloud Services to You, provided that this does not materially impair the provision of Unify Cloud Services to You. Where feasible, Unify or your Contracting Party will announce possible changes in Unify Cloud Services that affect the system requirements, adequately in advance.

15.2   At any time, the terms of these TOSP and the other terms and conditions referenced by it may be changed, or functionality be added to Unify Cloud Services or removed or other changes be implemented that require changes on your side, such as a change of your browser, microphone settings or the exporting of data. In this case, Unify or your Contracting Party will provide You with thirty (30) day notice by sending an email to the Customer Contact, and, at Unify's discretion, also in other suitable forms. If you continue to use the Unify Cloud Service after the change becomes effective, You are deemed to have accepted the changed terms.

If You do not want to accept the changed terms, You may terminate your subscription to the Unify Cloud Service with effect as of the date the change to the terms of the TOSP becomes effective, subject to a prior ten (10) day written notice from the date the change became effective. If a change has to be implemented due to a requirement under Applicable Laws which cannot be reasonably

and in a legally compliant manner be avoided or circumvented, there shall be no right on your side to terminate the Cloud Services Agreement.

16   Compliance with Export Control and Customs Regulations

16.1   All Products, including but not limited to items/commodities ("Items") (goods/hardware, software and technologies and/or Services) may be subject to export laws and regulations and/or to national, foreign and international regulations. The Parties acknowledge that violations to such laws and regulations are prohibited and that compliance with applicable rules and regulations must be ensured at all times.

16.2   Unify will perform all necessary and appropriate procedures for requesting any export authorizations required for deliveries to you, provided Unify will be the legal Exporter of Record for the deliveries. You will provide assistance, required documentation and certificates requested by Unify to obtain required authorizations or to review, ensure and document compliance with applicable laws and regulations.

16.3   Should required authorizations not be granted, granted with delay, granted with a reduced scope, be revoked or not renewed, Unify shall not be liable towards you. Such events shall be considered as a Force Majeure event.

16.4   You shall obtain in due time all required import licenses required for the Items imported from Unify. Unify will, on reasonable request, provide reasonable assistance and documentation in support of the import licensing process.

16.5   You are aware that Items supplied under Export licenses are provided for a specific end use and End User and may be subject to specific provisions and conditions. You will respect the contents of the applicable governmental licenses and authorizations and the certificates signed in the licensing process. You will not sell, transfer or make otherwise available items delivered under Export Licenses to any End User, end use or destination deviating from the contents of the Export License unless such action was authorized by the competent authority issuing the original export authorization.

16.6   You will only transfer, export or re-export Items received from Unify to reliable partners. They will ensure that Items are not made available in any way to parties, destinations and End Users under embargo, excluded from business or otherwise under relevant sanctions by Germany, the European Union, the USA or the United Nations.

16.7   You will not re-export any controlled technical information / technology under these TOSP.

16.8   If Items are exported directly to a country outside the EU under your responsibility, you guarantee direct export out of the EU or the country of dispatch without undue delay no later than thirty (30) days after handover of the items to you or its designated freight forwarder and during the validity period of the export authorization applicable to the individual export. You will only designate reliable freight forwarders (example: AEO certified) who participate in AES (Automated Export System – an automated European Union Customs process). You guarantee correct closure of the respective customs procedure on leaving the European Union or the country of dispatch. In case of non-compliance, you shall be liable for any additional costs – freight and other - and charges imposed on Unify by the national tax administration.

16.9   Shipments may not be re-routed to other destinations than those given in the shipment documentation. Such documentation may not be removed or replaced before the shipment has reached its originally declared destination.

16.10   In case of re-export of any Item by you and unless Unify is the legally defined Exporter of Record, you shall be responsible for the overall export process. You shall bear all costs related to export control for such re-export.

16.11 You shall indemnify and hold harmless Unify from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by you, and You shall compensate Unify for all losses and expenses resulting thereof.

17. Special Provisions for free-of-charge Subscription Plans (as applicable)

17.1 Your Contracting Party may offer you a free-of-charge subscription plan (Free or Trial offers) to a Unify Cloud Service under certain conditions, which are either laid out in the **Product and Service Description (PSD)** of the respective Unify Cloud Service or in specific trial or proof-of-concept agreements of your Contracting Party.. This clause 17 applies to all free-of-charge subscription plans and takes precedence over any other term of the TOSP.

17.2 If You use a free-of-charge subscription plan, you will not charge Unify or your Contracting Party for anything you do with, or submit to, Unify Cloud Services, including Feedback. You will bear any and all costs for using of your free of charge subscription plan. You bear the risk of, and the cost of, any loss of data, loss of revenue, time and effort caused by your use of a free-of-charge subscription plan.

17.3 Free-of-charge subscription plans to Unify Cloud Services may or may not have a defined expiry date. In any case, Unify or your Contracting Party may suspend or terminate the free-of-charge subscription plan at any time, giving at least four (4) weeks advance notice, in case the termination goes into effect before a defined expiry date. You should not use a free-of-charge subscription plan with any data that you cannot afford to lose or with data of which You do not have a separate backup physically stored outside of Unify Cloud Services, unless You intend to purchase a pay-for subscription later.

17.4 For free-of-charge subscription plan the **Service Level Agreement (SLA)** does not apply. Unify and your Contracting Party do not grant any SLA credits, and disclaims:

(a) any and all warranties with respect to Unify Cloud Services and the related Documentation, whether express or implied, including specifically implied warranties of merchantability and fitness for a particular purpose, and

(b) any liability for any problems in or caused by your free-of-charge subscription plan to Unify Cloud Services, whether direct, indirect, special, or consequential, including loss of profits.

17.5 If a free-of-charge subscription plan terminates it may be converted into a pay-for subscription plan. If so, You will have to choose which of your Unify Cloud Service Users will be covered by the pay-for subscription plan. Those Unify Cloud Service Users not covered by the pay-for subscription plan will be deleted from the Unify Cloud Service and will lose access to their User Data. Note that Unify or your Contracting Party have no obligation to convert your free-of-charge subscription plan to a pay-for subscription plan for the respective Unify Cloud Service.

18. General Provisions

18.1 **Proprietary Rights**. As to the trademarks, industrial design marks, names or domain names of Unify and of Unify's suppliers (for the purpose of this clause, "Marks"), they retain ownership of all Intellectual Property Rights in all of the Marks associated with or used in or displayed with Unify Cloud Services. You may not frame or utilize framing techniques to enclose any Marks of Unify or of Unify's suppliers, or other proprietary information (including images, text, page layout, or form) of Unify or Unify's suppliers without Unify's express written consent. You may not use any meta tags or any other "hidden text" utilizing Unify's or Unify's supplier's Marks without the respective Mark owner's written consent.

18.2 **Fees & Pricing plan**. The fees for your Unify Cloud Services subscription are set by your contracting party.

Annex 1 – Definitions

The capitalized terms used in these TOSP and the documents referenced herein are defined as follows:

 "Acceptable Use Policy" or "AUP" means a framework of rules and regulations that aim to ensure that everyone who uses Unify Cloud Services enjoys a productive, disruption-free and safe use of Unify Cloud Services. It describes what is deemed to be acceptable use of Unify Cloud Services, what not, and what will happen if there is a violation of the AUP.

"Accredited Reseller" means the company authorized by Unify to resell Unify Cloud Services and that Provides Unify Cloud Services to you if you hold the Cloud Services Agreement with that company.

"Agreement Value" means the total amount of the recurring Fees you actually paid to your Contracting Party under your Cloud Services Agreement in the twelve (12) month period preceding the event that leads to liability or, if the term of the Cloud Services Agreement has been less than twelve (12) months, the total amount of the recurring Fees that would have been paid had the Cloud Services Agreement continued for twelve (12) months, calculated as per the median amount of the Fees that were already paid to Unify until the relevant event. If the agreement was entered into with an accredited reseller of Unify, the Agreement Value will be determined according to the general list price at the time of the order.

"Applicable Export Control Laws" means any national and international foreign trade and customs requirements or any embargos or other sanctions such as anti-terrorism-laws, denied persons lists or similar stipulated by the Federal Republic of Germany, the European Union, the United States of America and other applicable national export laws, e.g. from the country/jurisdiction where you or a Unify Cloud Services User have its place of business. Applicable Export control Laws are a subset of Applicable Laws.

"Applicable Laws" means and includes all laws, statutes, regulations, directions, guidelines and codes of conduct of any governmental or Regulator of competent jurisdiction and any orders of any Regulator or other administration or court or other tribunal of competent jurisdiction which are applicable to these TOSP, you, Unify or to the performance of either your or Unify's obligations under these TOSP.

"Business Day" means the days of the week during which most businesses are operating, usually Monday to Friday except local public holidays or bank holidays. In order to determine the timeliness of a notice, the schedule of Business Days applicable to the receiving party shall prevail, while the timeliness of an action shall be determined by the schedule of Business Days applicable to the party obliged to take the action.

"Cloud Services Agreement" means an agreement between Customer and Contracting Party on the use of Unify Cloud Services by Customer, which the TOSP (this document) is part of.

"Contracting Party" means the party with whom Customer closes a Cloud Services Agreement on Unify Cloud Services. Contracting Party may be Unify, a legal entity of the Atos Group, or a reseller accredited by Unify. In any case the subject of the Cloud Services Agreement is a cloud service Produced by Unify.

"Conversation" refers to a number of conversation items (messages, files, real-time meetings via phone call, video, screen-share, etc.) shared between and viewable by all participants. Conversations can be "private" – in that users need to be explicitly added to the Conversation see the content or they can be

"open" – in that any User can choose to join. Conversations are moderated by the Conversation participants, with anyone in the Conversation having the capability to remove other people if necessary.

"Cross Tenancy Guest User" is a User who is Tenancy User of another Cloud Services Tenancy (different to yours), who is added to a Conversation in the End Customer's Unify Cloud Services Tenancy. Once the User from the other Unify Cloud Services Tenancy has accepted the invitation, it will have full access to the content of the specified Conversation, but it cannot access any other Conversation hosted in the End Customer's Unify Cloud Services Tenancy. A Cross Tenancy Guest User does not count against the number of User Accounts You subscribed to.

"Customer Contact" is a person within your business or organization who is assigned to be our primary contact and who has the authority to act on behalf of your business or organization in respect of all day-to-day activities relating to Unify Cloud Services. This person must be named during the registration process, will also be the first Unify Cloud Services User created in your Unify Cloud Services Tenancy, and will therefore also (initially) hold the role of the Tenancy Administrator.

"Customer Network" means any part of your network and the devices operated in it, including personal computers, active and passive data network equipment, telecommunications network applications and all associated equipment (including third party network components) which may be used for Unify Cloud Services.

"Data Processing Agreement" or "DPA" is an agreement for Personal Data processing under which Unify will collect, store, and process Personal Data.

"Defect" means a reproducible failure of Unify Cloud Services to comply with the specification of Unify Cloud Services as described in **Product and Service Description (PSD)**, which is posted on the Unify Cloud Services portal.

"Documentation" means the technical and/or functional descriptions that are provided or made available to the Customer along with Unify Cloud Services. The Documentation will in general be provided online. The Documentation includes, among other things, the description of performance characteristics, features or hardware and software requirements. If and to the extent required by the respective rights holder, the Documentation also comprises of the Open Source License texts or the special license conditions of a Freeware vendor or other commercial third party vendor of software.

"Effective Date" means the date on which the Cloud Services Agreement comes into force, as further described in the **TOSP.**

"End Customer", also referred to as "You", means the business or organization who is a party to the Cloud Services Agreement and who is responsible for the proper use of Unify Cloud Services by the Users and for their User Data in its Unify Cloud Services Tenancy.

"End User License Agreement" or "EULA" means our set of license terms and conditions for the use of software by end users. While Unify Cloud Services is, in principle, a cloud-based application, some of its components need to be downloaded and installed, such as apps for smartphones and tablets. These components are covered by the EULA. In addition, Open Source Licenses and Third Party EULAs may apply.

"Fees" means the fees and prices for Unify Cloud Services, as agreed between you and Unify or your Contracting Party. There may be monthly, usage based or one-time Fees.

"Freeware" means a computer program which may be used without payment or other compensation (for example, by advertising). Freeware may be subject to special license conditions of the vendor, which, for example, may limit the right to distribute or redistribute the Freeware. Freeware may have functional limitations which a commercial version does not have. In general, the vendor of a freeware does not grant access to the source code of the Freeware.

"Force Majeure Event" means any event beyond the reasonable control of a Party, including (i) damage to or destruction or compulsory purchase of the premises or other property belonging to the affected Party, (ii) fire, explosion, accident, lightning damage, electromagnetic interference; (iii) storm, earthquake, hurricane, tornado, flood, volcanic eruption or other natural disaster; (iv) war, threat of war, act of terrorism, insurrection, rebellion, riot or other civil unrest; (v) epidemics, pandemics, quarantine restrictions or other public health restrictions or advisories; (vi) strikes or lockouts or other labour interruptions; (vii) disruption to transport services; (viii) sanctions, embargoes or lack of materials, supplies or utilities, breaking off of diplomatic relations; (ix) the failure of any applicable governmental authority to issue any licenses or approvals, or the suspension, termination or revocation of any licenses or approvals, required for the operation of the affected Party's business or the performance of services, or any other circumstance as a result of which performance by the affected party is prevented by law; or (x) in the case of Unify, the occurrence of any of the aforementioned events to its subcontractors or suppliers which result in their delay or failure to perform.

"Guest User" means a Unify Cloud Services User who is not Tenancy User of your tenancy, to whom You want to provide temporary access to Unify Cloud Services t, under your full and sole responsibility and cost.

"Incident" means an event that affects the delivery of Unify Cloud Services, e.g. a case of non-performance of Unify Cloud Services, or the failure to achieve a Service Level. Incidents are further described in **Product and Service Description (PSD)**, which is posted on the Unify Cloud Services portal on your Accredited Resellers website.

"Intellectual Property Rights" means copyrights (including moral rights), patents, protected designs, registered designs, design rights, utility models, trademarks, service marks, business secrets, know-how, database rights, personal rights, company or business names, domain names and other rights of a similar type, in any country or jurisdiction, including all registrations, applications for registration, rights to apply for registration and licenses for or relating to such rights.

"Open Source License" or "OSS License" means license terms to a computer program that give the user, beyond the right to use without license fee or royalty, rights of use which are usually reserved usually for the owner of the copyright to the computer program, for example the right to analyse the computer program as desired, to edit it, to merge it with other computer programs or to derive their own computer programs thereof and to distribute the results thereof (for the purposes of this provision, collectively referred to as "Work"). In turn, such license terms require that at least one of the following conditions is met: (a) the source code or design information regarding the Work must be made available; (b) the right to create derivative works regarding the Work must be granted; (c) a royalty-free license to any third party to use the intellectual property rights of the party embodied in the Work or (d) to identify the owner of the copyright to the unmodified Open Source Software. Open Source Licenses are, by example and without limitation, any version of the GNU General Public License (GPL) or the GNU Lesser General Public License (LGPL) or the Affero General Public License (AGPL) or similar open-source licenses, "free" licenses, and the general licenses to these as "public domain".

"Open Source Software" or "OSS" means a computer program which is, in principle, available at no costs, which is licensed under an Open Source License, and that is available either (a) in source code form only, or (b) in (executable) object code form, and the source code is delivered together with the executable code.

"Personal Data" means any information relating to an identified or identifiable natural person ("Data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic cultural or social identity.

"Producing Unify Cloud Services, Produced" means to run the Unify Cloud Services software in a datacentre, to enable means to access this software for Users, and to make all other products and

services available which are collectively called Unify Cloud Services. Unify Cloud Services is Produced by Unify.

"Product and Service Description" or "PSD" means the description of Unify Cloud Services and the services associated with it. Some functions of Unify Cloud Services and the associated services may only be available if You subscribe to an eligible service package.

"Providing Unify Cloud Services, "Provided" means to hold a Cloud Services Agreement with You which grants you access to Unify Cloud Services. Unify Cloud Services is provided to You by a legal entity within Atos Group or Unify's Accredited Reseller.

"Publish" means any uploading, publishing, displaying, linking to or otherwise making available any User Content in Unify Cloud Services.

"Regulator" means any public authority which has or from time to time may have supervisory or regulatory authority over your Contracting Party and/or Unify and/or Unify Cloud Services in accordance with Applicable Laws over any aspect of the performance or fulfilment of any rights, entitlements or obligations related to Unify Cloud Services.

"Resolution" - Measures taken to resolve an incident. Can also be a work around.

"Service Day" means a day on which Unify provides a particular Unify Cloud Services Support Service, such as the UHD. Service Days for different Unify Cloud Services support Services may vary, depending on the relevant Unify Cloud Services Support Service and the applicable Unify Cloud Services Support Plan.

"Service Hours" means the times on a Service Day on which a particular Unify Cloud Services Support Service such as the UHD is available. Service Times may vary, depending on the relevant Unify Cloud Services Support Service and the applicable Unify Cloud Services Support Plan.

"Service Level Agreement" or "SLA" is incorporated in this TOSP as **Service Level Agreement (SLA)** and describes, basically, the level of service that you can expect from Unify with regard to Unify Cloud Services.

"Service Levels" means the service performance metrics with corresponding service level objectives for the provision of Unify Cloud Services.

"Session Guest User" is a temporary Unify Cloud Services user who is invited to a meeting (e.g. telco, videoconference, screenshare, etc.) hosted inside a Conversation of your Unify Cloud Services Tenancy. The Session Guest User only sees what is shared in the meeting. After the end of the meeting they will continue to have access to the content of the meeting for one (1) month. A Session Guest User does not count against the number of User Accounts you subscribed to. The Session Guest User might not be a Tenancy User of a Cloud Services Tenancy.

"Standard" means any technical specification that is distributed, published, or otherwise made available by any consortium, standards organization, special interest group, or like entity, for the purpose of widespread industry adoption.

"Subscription Plan" means a sellable Subscription product for Unify Cloud Services in which the specific features of at Subscription are defined, such as the term. The available service packages, arrangements for subscription change and renewal, billing cycles, and fees.

"Subscription" means the recurring procurement of Unify Cloud Services by End Customer at terms and conditions defined in the Subscription Plan. Unify Cloud Services are exclusively marketed by Subscriptions.

"Support Data" means Usage Data that is collected when a Unify Cloud Services User submits a support request, including information about the Unify Cloud Services User's hardware and software environment

when the fault occurred, and other related details, such as contact or authentication information, chat session personalization, data resulting from diagnostics, system and registry data about software installations, hardware configurations, and error-tracking files or screenshots.

"Support Forum" is a section of the Unify Cloud Services Support Portal which allows Unify Cloud Services Users from all customers and Unify Cloud Services Tenancies to discuss their questions regarding Unify Cloud Services, and to post and receive troubleshooting information. Use of the Support Forum is governed by the **Support Forum Rules (SFR)**, which are posted on the Unify Cloud Services portal on your Accredited Resellers website

"Tenancy Administrator" refers to a Tenancy User or your Cloud Services Tenancy, or a third party, who has been granted access to the Customer's administration console for Unify Cloud Services. The Tenancy Administrator may create Tenancy Users and other Users, and may grant other Tenancy Users, or third parties, access to the administration console to, thereby making them also a Tenancy Administrator. The first Tenancy Administrator is automatically created upon signup to Unify Cloud Services together with the Customer Contact.

"Tenancy User" means a Unify Cloud Services User who is registered by a customer as a user in a specific tenancy of the cloud service.

"Terms of Service Production (TOSP)" means this document with the key terms according to which Unify produces the Unify Cloud Services which are provided to Customer by Contracting Party. The TOSP must be part of any Cloud Services Agreement between Customer and Contracting Party for Unify Cloud Services

"Third Party End User License Agreement" or "Third Party EULA" means a set of license terms and conditions from the vendor of a commercial third party component or a Freeware, whose acceptance is made a prerequisite by such vendor for granting the right to use the respective third party component or Freeware.

"Unify Cloud Services App" is an application for mobile devices which can be used to access Unify Cloud Services.

"Unify Cloud Services Core Services" means the application "Unify Cloud Services" as defined in **Product and Service Description (PSD)**, which is posted on the Unify Cloud Services portal on your Accredited Resellers website. The ancillary facilities of Unify Cloud Services, such as the Unify Cloud Services Portal's section attending to the management of (new) subscriptions, the Support Forum, or optional plugins or features that must be activated and/or downloaded separately, are excluded.

"Unify Cloud Services Portal" means the website where You log in to Unify Cloud Services and where subscriptions to Unify Cloud Services are entered into.

"Unify Cloud Services Self Service" means a set of self-service support facilities for Unify Cloud Services, such as a FAQ and the Support Forum.

"Unify Cloud Services Support Plan" refers to a part of the TOSP with your Contracting Party which covers customer and user support services.

"Unify Cloud Services Support Portal" means a web based form of support from which the different forms of support provided by Unify can be accessed. The exact scope of the support is determined by the applicable service package.

"Unify Cloud Services Tenancy" means the logically separated segment or domain on the Unify Cloud Services platform that is dedicated to You and your Users.

"Unify Cloud Services" means, collectively, all cloud services branded by Unify including "Circuit" and "OpenScape Cloud", which are Produced by Unify Software and Solutions GmbH & CO.KG and Provided to You by Contracting Party.

"Usage Data" means statistical data, analytics, trends and usage information derived from each Unify Cloud Services User's use of Unify Cloud Services. Usage Data includes, by example and without limitation, aggregated quantitative information about number of Cloud Services User, used bandwidth, storage space or CPU capacity.

"User Account" means an account created by you within the Unify Cloud Services administration console, usually for a User. Unless you give your Contracting Party other directions, the User Data related to that User Account will be kept for the term of your subscription.

"User Data" or "User Content" includes, but is not limited to, all data, including all text, sound, software, image files, documents, photos, presentation slides, audio and/or video recordings, comments, questions, call entries and logs, transcripts or other content, information or files that a User submits to Unify Cloud Services, receives through Unify Cloud Services, and generates through using Unify Cloud Services, stores inside Unify Cloud Services, or otherwise creates by the use of Unify Cloud Services. In other words, it means all data about and from you or one of the Users that was not there before you signed up for Unify Cloud Services.

"User Help Desk" or UHD is a special helpdesk service that provides dedicated support for Unify Cloud Services.

"User" or "Unify Cloud Services User" (e.g. Circuit User) means, collectively, the different kind of users linked to a particular customer. You are responsible for all activities of your Unify Cloud Services Users and of their compliance with the TOSP and in particular their compliance with the Acceptable Use Policy (AUP).

Annex 2 – Additional TOSP for Circuit

Circuit provides real-time communication services. The Circuit service is not meant to be a replacement for your primary telephone or internet service. You should not rely on Circuit as your sole means of telecommunication.

> You also acknowledge that Circuit is not intended to support or carry emergency calls such as calls to hospitals, police, fire departments or other kind of services that connect a User to emergency services answering point. It is your responsibility to provide for fixed (landline) telephone services or wireless (mobile) telephone services that offer access to such emergency services. Circuit does not support the special features required by emergency services, such as providing information about the location of the caller to the emergency service. Please note that this also applies if, technically, you could actually connect from Circuit to an emergency service. In this case, you will need to provide details of your physical location to enable the emergency services to respond to You.

Annex 3 – Additional TOSP for OpenScape Cloud

OpenScape Cloud provides real-time communication services. The OpenScape Cloud service is designed to be your primary internal enterprise telephone service. OpenScape Cloud does not include Public Switched Telephone Network (PSTN) services. Such services can be integrated with OpenScape Cloud but must be procured from a registered service provider. See Annex - **Product and Service Description** **(PSD).**

Emergency calls are supported in the OpenScape Cloud standard offering. Emergency calling requires specific configuration of the OS Cloud tenant. Details how to activate and configure emergency calling for OS Cloud tenant can be found in the [Product and Service Description](#)

Annex 4 – TOSP – Service Level Agreement (SLA)

Unify Produces Unify Cloud Services and supports Unify Cloud Services Users with a service level outlined in this Annex and grants credits in case it cannot meet these service levels and certain conditions apply. Your Contracting Party is entitled to offer you this SLA including the SLA Credits as part of your Agreement with the Contracting Party. Requests for SLA credits have to be placed with your Contracting Party and Contracting Party will effectuate the credits. There is no contractual relationship between you and Unify.

This SLA covers the following Unify Cloud Services: Circuit and OpenScape Cloud, as part of the Cloud Services Agreement with Contracting Party. It applies to the Unify Cloud Service for which you have a paid-for subscription referred to as Subscribed Unify Cloud Service below.

1.   Definitions

In addition to the terms defined in Annex 1, the following definitions apply:

- "Availability" means the time during which the Subscribed Unify Cloud Service is available for access and use, subject to the exclusions described in this **Service Level Agreement (SLA)**, in particular section 2.
- "Availability Exceptions" means circumstances which are beyond Unify's control and under which the Subscribed Unify Cloud Service cannot be provided in accordance with Unify's SLA commitments, as outlined below in section 2.1c).
- "Contracted Month" means a full monthly billing cycle during the term of the subscription,
- "Downtime" means the total minutes in a Contracted Month during which the entirety of the Unify Cloud Core Service is unavailable. The unavailability of individual service features is not counted as Downtime, unless such unavailability renders the Unify Cloud Core Service unavailable or inaccessible.
- Response Time" means the time between receipt of a service request by Unify and the time the UHD first responds to that service request, subject to the applicable Service Hours
- "Verified Downtime" means Downtime claimed by the Customer and verified by Unify, as set forth in this SLA.

2.   Availability of Unify Cloud Services

2.1   General

Unify is obligated to use commercially reasonable efforts to provide Unify Cloud Services with 99.9% Availability, except for Downtimes within the scope of the following exclusions:

a) Scheduled Maintenance

This is Downtime scheduled in advance to install bug-fixes, updates, and to conduct other maintenance work. Scheduled Maintenance will, in general, be done outside times of peak use of Unify Cloud Services. Customers will be notified about Scheduled Maintenance in text form at least two (2) days in advance.

b) Emergency Maintenance

In urgent cases, Downtime may be scheduled immediately if it is required to prevent or avoid damages, or to install bug-fixes which cannot be delayed until the next Scheduled Maintenance period, e.g. a security fix for a vulnerability that is considered to be "high". Unify is obligated to attempt to notify the End-Customer, but a shorter notice period than for Scheduled Maintenance may apply.

c) Availability Exceptions

These are Downtimes caused by:

- Force Majeure Events;

- Problems, Incidents and Defects caused by you, such as

   - Despite Unify's or your Contracting Party's advice, you continue to use the Subscribed Unify Cloud Services in a manner that is dangerous or wrongful, in particular if such use violates the **Acceptable Use Policy** **(AUP)** posted on the Subscribed Unify Cloud Services portal on your Accredited Resellers website,

   - Any unauthorized action or inaction from your employees, agents, contractors, or vendors with respect to the Subscribed Unify Cloud Services, or if anyone gains access to Unify's network by using your passwords or equipment without your permission;

   - Your failure to adhere to any required configurations, platforms, software or hardware;

   - Your failure to follow any applicable policies for acceptable use, including any uses of the Subscribed Unify Cloud Services that violate the **Acceptable Use Policy** **(AUP)**.

- Problems, Incidents and Defects caused by third parties's software (including any third party services or software such as browsers that you use) or third parties's hardware (including your network equipment), provided these are not under the control of Unify or were not recommended for the Subscribed Unify Cloud Services;

- Failure of the Internet connection between you and Unify's Point-of-Presence for the data centres providing the Subscribed Unify Cloud Services;

Also excluded are any downtimes affecting Unify Cloud Service User accounts that were not subject to a paid-for Subscription at the time of the Incident (including, but not limited to, the FREE subscriptions or trial subscriptions for example).

2.2   Availability Credits

a) In the event Unify fails to meet the availability targets for the Subscribed Unify Cloud Services for the Contracted Month, you may claim an Availability Credit with your Contracting Party as per the table below.

You must submit your claim to an Availability Credit through your Customer Contact with your Contracting Party no later than ten (10) Business Days after the invoice date. The service request must contain a copy of the invoice and reasonable details on the claimed downtime and the availability level not met by Unify.

Your Contracting Party will pass the claim on to Unify. Unify is obligated to verify with reasonable judgement the claimed Downtime and respond to the claim back to your Contracting Party within ten (10) Business Days if the claim could be verified by Unify (Verified Downtime) and which Availability Credit will be applied.

b) The following Availability Credits refer to the Service Packages and Package options described in more detail in **Product and Service Description** **(PSD)**, which is provided by your Contracting Party, and they will be applied to achieved Availability Levels:

Achieved Availability Level	Availability Credit per Service Package		
	ENTERPRISE ENTERPRISE V,	**PROFESSIONAL PROFESSIONAL V**	**TEAM TEAM V**
< 99.9 % but > 99.5%	2.5%	-	-
< 99.5% but > 99.0%	5%	2.5%	-
< 99.0% but > 98.5%	7.5%	5%	2.5%
< 98.5% but > 98.0%	10%	7.5%	5%
< 98.0% but > 97.5%	12.5%	10%	7.5%
< 97.5% but > 97.0%	15%	12.5%	10%
< 97.0% but > 96.5%	17.5%	15%	12.5%
< 96.5% but > 96.0%	20%	17.5%	15%
< 96.0% but > 95.5%	22.5%	20%	17.5%
< 95.5% but > 95.0%	25%	22.5%	20%
< 95.0% but > 90.0%	50%	25%	22.5%
< 90.0%	100%	50%	25%

For Package Options, the SLA credits for "ENTERPRISE" apply.

Calculation:

▪ Availability Credits refer to the invoice of the billing period which is subject to the claim.

▪ Credited Amount is calculated by multiplying the Availability Credits with the respective invoice amounts for each Service Package and Package Options and taking the sum over these products.

- The <u>Achieved Availability Level</u> is calculated as follows: the difference between (a) the total number of minutes of the Contracted Month less (b) the total number of minutes of the Qualified Downtime, divided by (c) the total number of minutes of the Contracted Month.

- The <u>Qualified Downtime</u> is calculated as follows: Verified Downtime less (a) the total number of minutes of Scheduled Maintenance and Emergency Maintenance of the Contracted Month and (b) the total number of minutes of Availability Exceptions, as defined above.

Example for the calculation of Availability Credit:

- Assumptions:
    - Billing period: May 12 to June 11
    - Invoiced amount for that month: 300 EUR for Unify Cloud Service Users assigned to the ENTERPRISE Service Package, 200 EUR / PROFESSIONAL, 100 EUR / TEAM, and 100 EUR for Package Options (or USD or other invoice currency)
    - 300 minutes of Qualified Downtime in that billing period (31 days).
- Total number of minutes in the Contracted Month = 31days x 24h x 60mins = 44,640 minutes.
- Achieved Availability Level = (44,640 – 300) / 44,640 = 99.32%.
- The resulting Availability Credits are 5% for Unify Cloud Service Users assigned to ENTERPRISE Service Package, 2.5% / PROFESSIONAL, 0% / TEAM, and 5% for Package Options.
- The Credited Amount calculates as this: 5% of 300 EUR for Unify Cloud Service Users assigned to the ENTERPRISE Service Package, plus 2.5% of 200 EUR /PROFESSIONAL, plus 0% of 100 EUR / TEAM + 5% x 100 EUR for Package Options = 25 EUR (or USD or other invoice currency).

c) The Availability Credit will be applied by your Contracting Party to the invoice following Unify's response to your availability credit claim. The availability credit cannot exceed one hundred percent (100%) of the invoiced amount, nor can availability credits be accumulated over several Contracted Months. There is no refund of Availability Credits for the last two (2) months of the subscription in case the subscription is not renewed.

d) Eligibility:

In order to be eligible for Availability Credits, you must not be

- late with your monthly payments,

- in violation of the **Acceptable Use Policy** (AUP)

- otherwise in material breach of the **Terms of Service Production** (**TOSP**)

e) Availability Credits will only be awarded if you have a paid-for subscription to a Unify Cloud Service. Availability credits are not available if you are subscribed to a Free service package, trial subscription, or any other unpaid for test or evaluation subscription.

2.3   Availability Credits are your sole and exclusive remedy with respect to any claim for Defects in a Subscribed Unify Cloud Services. In particular, no Fees will be refunded. This shall not affect your right to terminate the Cloud Service Agreement for cause, as stipulated in the **Terms of Service Production (TOSP)**.

3. Support for Unify Cloud Services Users

3.1   User support services are defined and offered by your Contracting Party and subject to your Cloud Services Agreement with your Contracting Party. Unify generally produces the following support facilities to Unify Cloud Service Users:

▪ Self-help via the Unify Cloud Services Support Portal,

▪ User Help Desk (UHD),

▪ Processing of service requests, i.e. the opening of tickets for Defects.

The different support facilities are described in more detail in the **Product and Service Description (PSD)**. Some of these support facilities are only available to you if you have subscribed to the corresponding Service Package. The extent to which you have access to these facilities and how these facilities are provided to you is subject to your Cloud Services Agreement with your Contracting Party

3.2   The Unify Cloud Services Self Service facilities are an integral part of Unify Cloud Services and therefore are covered by the preceding section on the availability of Unify Cloud Services. There is no separate availability commitment for the Unify Cloud Services Support Portal.

3.3   The availability of the UHD is described in the **Product and Service Description (PSD)**. Unify will make commercially reasonable efforts to respond to requests as quickly as possible. There are no SLA credits for UHD services.

3.4   For requests placed to UHD or for tickets Unify is obligated to make commercially reasonable efforts to achieve the Response Time objective described below, depending on the priority level of the service request:

Priority	Response Time objective
Priority Level 1	1 hour
Priority Level 2	2 hours
Priority Level 3	24 hours

3.5   Response Times are measured from the point in time on when the service request is received by Unify if that point in time falls within a Service Hour of the UHD, otherwise from when the next Service Hour period commences. If the Response Time for a service request exceeds the Service Hour of the UHD, the measuring of the Response Time will continue once the subsequent Service Hour period of the UHD begins. The measuring ends once the service request has been responded to, which can include email notification of the submitting Unify Cloud Service User.

3.6   Priority Levels will be defined by Unify when the Unify Cloud Service User places the service request. Unify reserves the right to re-set the Priority Level as the service request is handled per the definitions below as part of the response to the service request, giving reasons.

▪ "Priority Level 1" means Incidents where Unify Cloud Core Services in its entirety, as it is described in the TOSP and in particular in the **Product and Service Description (PSD)**, is not available to all of your Unify Cloud Services Users.

▪ "Priority Level 2" means Incidents where relevant parts or functionalities of Unify Cloud Services, such as the search function, storage access, content sharing, etc., as they are described in the TOSP and in particular in the **Product and Service Description (PSD)** are not available.

▪ "Priority Level 3" means incidents that are not assigned to priority levels 1 and 2.

There is not credit if the objectives for the Response Time and the provision of a Resolution are not met.

Terms of Service (TOS) for Circuit

Version 2.0 as of August 2016

Click here to download PDF.

By clicking "Accept" you accept and acknowledge that you have read these Terms of Service (TOS) and the other terms referred to from these TOS ("Agreement"). You also represent and warrant that you have the authority to bind the business or organization on whose behalf you accept these terms.

If you do not agree to this Agreement, please click the "Cancel"/"Back" button and do not use Circuit.

1. Welcome to Circuit!

1.1   "Circuit" is Unify's cloud-based team collaboration and communication product. Circuit helps people to communicate and collaborate with others in their work environment in real time and through multiple channels, including email, chat, telephone and by sharing documents. It is provided as a Software-as-a-Service (SaaS) application and is constantly improved and further developed.

1.2   Please read the Agreement carefully. It is the base of the legal relationship between your business or organization and Unify regarding the use of Circuit and the associated software and services. Prior to using Circuit, your business or organization must accept the terms of this Agreement and agree that any person to whom your business or organization grants access to its Circuit Tenancy, are bound by the terms of this Agreement and the documents referenced herein.

1.3   We address you and your business or organization collectively as "you", and Unify may also be referred to as "we". This, and other capitalized terms used in the Agreement, are defined in **Annex - Definitions**.

2. Provision of Circuit

2.1   Unify will make Circuit available to you from the Effective Date on. The scope of Circuit's functionalities is described in **Annex - Product and Service Description (PSD)**. **Annex - Service Level Agreement (SLA)** describes the service levels that apply to Circuit.

2.2   Circuit is a SaaS application, and as such, Unify may improve and expand Circuit at any time. Unify may replace or update or extend certain functionalities of Circuit by equivalent functions. Unify may select and/or modify at its sole discretion the equipment, hardware and software, including utilities and tools, telecommunications equipment and terminals, IT systems and other items that we use to provide Circuit to you, provided that such changes do not materially impair the provision of Circuit to you. In the event Unify implements changes that materially affect you or your use of Circuit or the terms under which Unify provides Circuit, Unify will follow the procedure outlined in Sec. 19.

2.3 You acknowledge that Circuit is not a replacement for your primary telephone or internet service. You do not rely on Circuit as your sole means of telecommunication. The services of a telecommunications provider for the public are not part of the Agreement.

You also acknowledge that Circuit is not intended to support or carry emergency calls such as calls to hospitals, police, fire departments or other kind of services that connect a user to emergency services answering point. It is your responsibility to provide for fixed (landline) telephone services or wireless (mobile) telephone services that offer access to such emergency services. Circuit does not support the special features required by emergency services, such as the provision of information about the location of the caller to the emergency service. Please note that this also applies if, technically, you could actually connect from Circuit to an emergency service. In this case, you will need to provide details of your physical location to enable the emergency services to respond to you.

2.4 When using Circuit, you must at all times comply with all Applicable Laws, including, but not limited to: (a) with respect to Personal Data, all applicable privacy laws and regulations and (b) laws or regulations relating to the recording of communications, including, when required, advising all participants in a recorded Circuit audio or video conversation or meeting that it is being recorded and that Circuit User Data and Personal Data may be transferred outside the European Economic Area and the US. It is your responsibility to ensure that you have the right to use Circuit where you are located, as well as where your meeting invitees are located.

3. Support for Circuit

When you sign up for Circuit, Unify will provide you with access to a variety of support services for Circuit, including FAQs, videos and other technical support literature, support and communication forums such as the Circuit Support Forum and other product- and service-related information. The exact scope of the support services available to you may vary by the applicable Service Package/Circuit Support Plan and is described in detail in **Annex - Product and Service Description (PSD)**.

4. Eligibility to sign up for Circuit

4.1 Unify offers Circuit only to businesses and organizations i.e. all natural or legal persons or a partnerships with legal personality who or which act in exercise of his, her or its trade, business or profession. We do not offer Circuit to other persons, in particular to consumers. In any case, a person less than 18 years old or who is considered a minor in its state or country of residence, cannot register for Circuit or be signed up by you as a Circuit User.

4.2 Without limitation to the statutory rules on businesses by appearance, if Unify reasonably believes that you or a specific Circuit User do not meet the above stated requirements, Unify may, without liability and at its sole discretion, block or delete that Circuit User Account(s) and their Circuit User Data and/or any portion, aspect or feature of Circuit. Depending on the case, Unify may elect to terminate the entire Agreement for cause with immediate effect.

5. Signing up for Circuit

5.1 To sign up for Circuit, you must complete a registration process and provide us with current, complete and accurate information, as prompted by the registration form. You must also accept the terms of the Agreement. If you act for a business or organization, depending upon the legal jurisdiction in which your business or organization operates, you may also need to conclude the Data Processing Agreement (DPA).

5.2   If you want to subscribe to the paid-for version of Circuit, or if you want to change your trial version into a paid-for version, you will also have to provide payment information, e.g. a credit card number, a VAT number and, if applicable, a separate billing address.

5.3   The information you provide must be current, true and complete and you must communicate any change to Unify without delay. Any delays or late payment caused by your failure to update the billing information shall be your responsibility, as well as any costs caused thereby.

5.4   The registration for Circuit, whether or not it is for a Free or paid-for Service Package, and including those registrations made through Unify's Partners, will result in a binding proposal from your business or organization to Unify to enter into the Agreement. Unify will inform you if your proposal is accepted via direct email or through your Unify Partner. Unify is free to accept or deny any such proposal at Unify's sole discretion. If it is accepted, the Agreement becomes effective, and if it is rejected, there is no Agreement and neither you nor Unify have any liability against the other party.

5.5   Once Unify has accepted your proposal, you and the other Circuit Users you create through the Circuit administration console will be given a username and password via email, which, upon initial access, must be changed to a password known only to such Circuit User. You must ensure that your password(s) do not become known to unauthorized third parties. In the event you reasonably suspect that your password(s) have been compromised, you must notify Unify without delay. You are liable for all damages due to your fault to maintain the confidentiality of the passwords.

5.6   The first Circuit User that is created for your business or organization during the signup process will hold the role of the Circuit Tenancy Administrator. That first Circuit User will also hold the role of Customer Contact. The password for that account should be handled with special care.

5.7   All notices between the Parties shall be at least in text form, unless written form is specifically required in the Agreement. In the day-to-day business, all communications may be delivered electronically with effect for and against the Parties, e.g. via email or in some cases by means of notices in the app or on the login page, e.g. notices which are of general interest to all Circuit Users such as the announcement of new features or planned maintenance windows. Electronic communication, which recognizably originates from a Party, will be attributed to that Party.

6.   Feedback about Circuit

Unify is very interested to hear about your comments, criticisms and suggestions for changes with respect to the design, the functionality and the performance of Circuit.

To the extent you provide Unify with such information and data about the tests you have done, the test results, and other material such as screenshots, recordings, concepts, etc. (collectively, "Feedback"), you agree that Unify owns all Feedback that you submit to Unify. You hereby assign and grant Unify all rights, title and interest in the Feedback and all Intellectual Property Rights herein, including the right to use, share, and commercialize the Feedback in any way and for any purpose. If requested by Unify, you or the competent person(s) within your organization will execute such further instruments as Unify may reasonably request confirming Unify's unlimited ownership interest in such Feedback.

You will not give any Feedback that is subject to a license that requires Unify to grant any rights (e.g.,Freeware and Open Source License) or make any payments to third parties because the Feedback was incorporated into Circuit or the Documentation or any other of Unify's products, software, or services or other items. These rights survive the term of this Agreement.

For the avoidance of doubt, with the exception of the Feedback you provide to Unify, Unify does not claim ownership of any of the User Content you submit to Circuit (see also below). You should

carefully review your Feedback and possibly clean it of any User Content that you do not want Unify to own.

7. Right to Use Circuit User Data, Handling of Circuit User Data

7.1 By signing up for Circuit and submitting Circuit User Data to Circuit, you agree that Unify and Unify's affiliates, contractors, resellers and partners shall have, for the term of the Agreement, the world-wide, royalty-free, sub-licensable, right and license to use, modify, process, reproduce and distribute the Circuit User Data, solely for the purpose of providing Circuit to you and the Circuit Users you appoint. This right and license also includes the right to publicly perform or publicly display the Circuit User Data, where such facilities are provided within or through Circuit and if effected by you. Unify's contractual obligations to maintain the confidentiality of the Circuit User Data or Unify's data privacy obligations shall not be limited thereby.

7.2 You and your organization must have all the rights, licenses, and permissions required from third parties to use the Circuit User Data and to reproduce, publish, and display Circuit User Data within and outside of Circuit.

You acknowledge that Unify can treat all Circuit User Data submitted by you or one of your Circuit Users to Circuit as if it is owned by you. Unify is only acting as a passive conduit for your Circuit User Data. Unify does not claim any ownership rights in your Circuit User Data. Unify will not review, share, distribute, or reference your Circuit User Data except as provided herein or in the **Acceptable Use Policy (AUP)** for Circuit, or as this may be required by Applicable Laws.

7.3 If you object to any third party Circuit User Data, Unify will attempt to resolve that as per the procedure described in the **Acceptable Use Policy (AUP)**. In the event Unify finds such third party Circuit User Data to be permissible under the AUP, your sole remedy is to cease using Circuit. However, this does not constitute a right to prematurely terminate the Agreement.

7.4 If you believe that Unify or any of Unify's affiliates or any of your or a third party Circuit User (including Guest Users) violated a copyright, please first notify Unify of the potential copyright infringement or other intellectual property rights issue before taking legal action. The violation-resolution procedure described in the **Acceptable Use Policy (AUP)** shall be applied accordingly.

7.5 You understand that publishing Circuit User Data on Circuit is not a substitute for registering it with a copyright office or any other intellectual property rights organization such as, for instance and where applicable, the U.S. Copyright Office.

8. Liability for Circuit User Data

8.1 You are entirely responsible for any and all activities that occur under your Circuit Accounts and with your Circuit User Data. With your subscription to Circuit you acknowledge and consent, and you will make all of your Circuit Users including Guest Users acknowledge and consent, that all Circuit User Data is in your sole responsibility.

Circuit User Data may be accessible by the Circuit Tenancy Administrator. If a Circuit User is deleted, the Circuit User Data of that Circuit User may still be accessed by other Circuit Users who shared a Conversation with that Circuit User.

For technical reasons, inside the Circuit support Forum accounts of Circuit Users who posted content to the Circuit Support Forum will be disabled, not deleted. See the **Support Forum Rules (SFR)** for details.

8.2   You will indemnify, defend and hold harmless Unify from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from a violation of sections 7 to 8 that is attributable to you.

9.   Data privacy

9.1   By using Circuit, you and each of your Circuit Users will upload, create or receive Circuit User Data containing personally identifiable information protected under Applicable Laws ("Personal Data"). Unify as the operator of Circuit is very serious about the safety and security of such Personal Data.

9.2   Unify will provide Circuit through personnel who are bound to data secrecy as defined by Applicable Law.

9.3   With regard to the Personal Data stored or otherwise processed by Unify, Unify will observe your directions and shall take the necessary technical and organizational measures to protect the Personal Data from disclosure or misuse. This shall also apply to Personal Data that Unify retains after the termination or expiry of this Agreement. Unify's liability for breaches of data protection shall be excluded if Unify acted in accordance with a direction given by you.

9.4   Unify will process Personal Data obtained from you only for the purposes of providing Circuit and shall delete such Personal Data from Unify's systems if it is no longer needed for that purpose, subject to any data retention obligations required by Applicable Laws.

9.5   Unify may use subcontractors to provide Circuit. To the extent Unify uses subcontractors, we will impose upon them a similar obligation as per this section 9, in particular section 9.2 in accordance with the data protection provisions of this Agreement and Applicable Laws. Where required by applicable law, they shall be bound by contractual terms no less binding than the **Data Processing Agreement (DPA)** and follow a standard that meets or exceeds the standard provided for in the **Data Privacy Statement (DPS)**.

9.6   Unify has no control over, and is not responsible for, the privacy of any Circuit User Data that you have shared with others, so always use caution when giving out any Circuit User Data that may contain Personal Data or other sensitive information. You agree to meet all statutory required preconditions for your intended use of Circuit and the Circuit User Data for which you are responsible, e.g. by obtaining consent from employees so that in this regard Unify can provide Circuit without infringing any Applicable Laws. You are in particular responsible for observing your workers council rights of co-determination, where applicable. You and your organization shall indemnify Unify from all claims and damages resulting from your failure to do so.

9.7   More details on Unify's data protection measures can be found in the **Data Privacy Statement (DPS)** which must be presented to each single Circuit User at their first login and can be accessed from within Circuit at any time.

9.8   Where required by applicable law, if you represent an organization that signs up several Circuit Users for Circuit (Customer), you acknowledge and accept that primarily the **Data Processing Agreement (DPA)** shall determine your data privacy relationship with Unify. Thereunder, Unify will act as the data processor and you will be the data controller. The DPA, where applicable, takes precedence over the DPS.

You hereby also agree that the terms of the DPA, where applicable, and the DPS shall apply to each of your organization's Circuit Users, and that you will take appropriate measures to ensure these terms are binding upon them.

10.   Security

10.1 Unify has implemented commercially reasonable technical and organizational measures designed to secure your Personal Data and Circuit User Data from accidental loss and from unauthorized access, use, alteration or disclosure. If you have entered into the DPA/DPS, you can find details about such measures in it.

10.2 While Unify does warrant that it will uphold the contractually agreed technical and organizational measures, Unify doesnot guarantee that unauthorized third parties will never be able to defeat those measures or use your Personal Data and Circuit User Data for improper purposes. You understand that you provide your Personal Data to Circuit at your own risk and that Unify's liability with respect to Personal Data shall be limited as stipulated in this Agreement.

10.3 You are entirely responsible for maintaining the confidentiality of all of your access credentials to your Circuit accounts, such as passwords and in particular with respect to the Circuit Tenancy Administrator. None of your Circuit User's may use any other Circuit User's Circuit Account at any time without the permission of the affected Circuit User.

10.4 You must know the identity of any Circuit User you sign up or invite, including Guest Users. You may not permit parties that are unknown to you, or who have not identified themselves to you, to use Circuit. Failure to do so may result in Unify blocking access to single Circuit Accounts or, in serious cases, of your entire access to Circuit up to and including the termination of the Agreement.

10.5 You agree to notify Unify immediately of any unauthorized use of your Circuit Accounts or any other breach of security that you know of or reasonably suspect. Unify will not be liable for any loss that you may incur as a result of someone else using your passwords or circuit Accounts, either with or without your knowledge, unless it was Unify's fault that the passwords were disclosed. You acknowledge and agree that in such event you could in turn be held iable to Unify for any damages and liabilites incurred by Unify or third parties due to that unauthorized use of your Circuit Accounts or passwords.

11.   Local availability may be limited

Circuit may not be available in, or accessible from, all countries or for use in a particular location. You are responsible for following the Applicable Laws in your jurisdiction, state or country and must not use Circuit, if such use would result in a breach of local Applicable Law. Unify reserves the right to modify or disable features and functionalities of Circuit and/or any related services, if required to comply with local Applicable Laws. In some cases some of your Circuit Users may need to use a separate instance of Circuit. Unify also reserves the right to block access to Circuit from certain countries or jurisdictions. Such limitation or modification or disablement does not entitle you to prematurely terminate the Agreement.

Please contact Unify or your Unify Partner, for the latest list of countries in which Circuit is available, and to learn about any functional variations applicable ot certain countries or jurisdictions.

12.   License, Copyright and Ownership of Circuit

12.1 Subject to the terms of this Agreement, Unify grants you, effective upon Unify confirming its acceptance of your subscription application, and then for each version of Circuit that is made available to you under the Agreement, a worldwide, revocable (pursuant to any termination of the Agreement), non-exclusive, and non-transferable right under Unify's Intellectual Property Rights to access and use Circuit from any technically compatible device that is controlled by your organization, within the scope described in this Agreement and the Documentation. This right is

subject to you paying the remuneration for your subscription to Circuit, except for the FREE Service Package, which Unify provides to you for free.

12.2 Save for this right to access and use Circuit, all title to and all Intellectual Property Rights in Circuit, including but not limited to all modifications thereto, be they based on Feedback or not, shall remain the exclusive property of Unify and shall not be used in any way other than as described in this Agreement or the Documentation. You acknowledge that, as between Unify and you, Circuit and all Intellectual Property Rights with respect thereto are and will at all times be the property of Unify, even if suggestions made by you, e.g. as part of Feedback, are incorporated into subsequent versions of Circuit.

12.3 You do not have any rights to disclose, sublicense, or otherwise transfer access to Circuit or any software that may be made available to you for download as part of your subscription to Circuit, or the related documentation, or other of Unify's proprietary information. You may not sub-rent or sub-lease Circuit to any third party, including any of your Affiliates, unless explicitly agreed in writing with Unify. You may not reverse engineer, reproduce, de-compile or disassemble Circuit, except to the extent expressly permitted by Applicable Law. You agree not to claim or assert title to or ownership of Circuit.

13. Confidentiality

13.1 Each Party shall use all Confidential Information exclusively for the performance of the Agreement, keep all Confidential Information confidential with the same degree of care as it uses with respect to its own confidential information and in any case at least with the care of a prudent business person; and shall not make any Confidential Information available to third parties. Affiliates, subcontractors as well as employees of a Party, their related companies and their subcontractors shall not be regarded as third parties, provided that they "need-to-know" the Confidential Information in order for a Party to perform its obligations under the Agreement.

Each Party shall provide that all recipients of any Confidential Information are bound by non-disclosure obligations that are equivalent to this Agreement. Each Party shall be responsible for the compliance of any recipients of Confidential Information with the obligations set forth in this Agreement.

13.2 The above obligations shall not apply to Confidential Information to the extent (a) it was, or has become after disclosure by a Party, lawfully known to the receiving Party without any duty of confidentiality, provided that, to the receiving Party's knowledge, the third person providing such Confidential Information to the receiving Party did not violate any duty of confidentiality; (b) is, or has become after disclosure by a Party, publicly known, provided that the receiving Party is not responsible for such Confidential Information becoming publicly known and further provided that any Confidential Information shall not be deemed publicly known because a portion thereof is or becomes publicly known; (c) is independently developed or acquired by the receiving Party; (d) has been released by the disclosing Party in writing; or (e) the receiving Party is obliged to disclose under Applicable Laws, provided that, if not forbidden by such Applicable Laws, the other Party was informed of such requirement without delay so that such Party may seek a protective order or other appropriate remedy. If such protective order or other remedy cannot be obtained, or if such Party waives in writing the other Party's obligation to comply with the terms of this section 13, such other Party shall only furnish that portion of the information which it is advised to by written opinion of counsel and which is legally required. Such Party will also take all reasonable actions to ensure that such Confidential Information it was compelled to disclose will be treated confidentially.

The Party invoking an exception has to prove that the prerequisites for such exception are met.

13.3 All obligations regarding the Confidential Information in this Section shall survive the termination of the Agreement for any reason for a period of three (3) years. This time period shall begin with the end of the calendar year in which the Agreement was terminated. In the event Applicable Laws require that a Party must retain Confidential Information for a longer period of time, e.g. for taxation or audit purposes, it may only do so for the sole purpose of complying with such Applicable Laws and the confidentiality obligations stipulated in this Agreement shall continue to apply with respect to such Confidential information until it is destroyed in the Party's ordinary course of business.

13.4 Each Party shall be entitled to request at all times the return or destruction of any Confidential Information as well as any copies thereof. The receiving Party undertakes to return, or confirm the destruction of, any Confidential Information within a time period of four (4) weeks from the receipt of such a request.

This shall not apply to (a) routinely made backup copies of electronically stored data; (b) to the extent that the receiving Party is obliged under Applicable Laws to keep the Confidential Information or copies thereof and (c) to the extent that the receiving Party needs the Confidential Information in order to prove the due performance of its contractual obligation or to enforce its rights.

14. Downloadable Software

14.1 In order to use some features of Circuit, or to use Circuit on some devices, you may have to download and install software, e.g. an app for a smartphone or tablet device, or a plugin. Such software is licensed to you under the terms of the Agreement and, in addition, the terms of our **End User Agreement (EULA)** apply. In some cases, the software may contain third-party software components, e.g. Freeware or Open Source Software, which may be subject to additional Third Party EULAs or Open Source Licenses, respectively. Such separate licensing terms shall prevail over Unify's EULA. A copy of the EULA and the separate licensing terms, if any, may be obtained from Unify or the relevant Unify Partner prior to entering the Agreement.

14.2 The EULA and any separate licensing terms will be shown during the installation process or are included in the Documentation. Any installation of the software is subject to your acceptance of those license terms. If you do not want to accept them, you may not use the downloadable software.

14.3 The software shall only be delivered and licensed in object code form i.e. executable, machine-readable form. There is no claim to delivery of the source code. Insofar as the terms of Open Source Licenses provide for the provision of source code, Unify may elect to make the source code available (a) by including it in the software delivery or (b) upon your request, send separate media in return for reimbursement of expenses, or (c) through Unify's website. Option (b) shall always be available, and covers the relevant Open Source Software used in the current version downladable software for Circuit and all preceding versions, going back to at least three (3) years.

14.4 You may copy such downloadable software for backup or archival purposes, or as part of using Circuit, but for no other purpose. You may not remove or alter any copyright or proprietary notice. You may not reverse engineer, decompile or disassemble the software save where explicitly permitted by law or by applicable Open Source Licenses. Distribution within your business or organization by other means than Circuit (e.g. internal software distribution system) is permitted only to the extent that downloadable software is distributed soley to and for the use of your Circuit Users.

15. Warranties

15.1 Unify will provide Circuit in a professional manner, but we do not warrant that your use of Circuit will always be uninterrupted or error free. The quality and manner of the provision of Circuit is described in more detail in **Annex - Product and Service Description (PSD)** and **Annex - Service Level Agreement (SLA)**.

For trial uses and FREE service packages, see section 23.

15.2 If there is a Defect in Circuit, Unify will remedy such Defect at its own cost and expense, provided that you notify Unify of such Defect at least in text form without undue delay and in any case not later than five (5) Business Days from your knowledge of the Defect.

15.3 You will render reasonable assistance free of charge, in particular by a prompt implementation of any work-around solution or the sending of logs. You bear the reasonable costs of an improper assertion of a Defect, in particular if it turns out that Circuit is actually not defective or if Unify is not responsible for the Defect, provided you could have avoided the improper assertion by applying reasonable care when examining the Defect.

15.4 Unify will decide, at its sole discretion, how and when the Defect will be fixed and whether a workaround will be provided or a correction release of Circuit or the affected component will be made available.

15.5 With respect to Defects that are within Unify's area of responsibility , your sole remedy is to claim a Service Level Credit to the extent set forth in **Annex - Service Level Agreement (SLA)**, for eligible subscription plans. If the Defect is not remedied and materially impairs your use of Circuit in accordance with the Agreement on an ongoing basis, you may terminate the Agreement without regard to the minimum term requirement. In this case, prepaid Fees (if any) shall be refunded to you on a *pro rata* basis i.e. from the time your termination becomes effective.

15.6 Unify shall be exempt from its obligations set forth in this Agreement and may be entitled to an extension of time and a claim for additional costs, if and to the extent Unify is prevented from performing such obligations or is delayed in the performance of such obligations, due to non-fulfillment of your obligations under this Agreement, or in a case of Force Majeure.

15.7 Nothing in this Agreement shall be construed as a guarantee or warranty unless otherwise expressly provided for herein with the words "guarantee" or "warranty

15.8 The provisions of this section 15 are exhaustive with respect to claims based on Defects. Circuit is otherwise provided "as is" and as available. SAFE AS EXPLICITLY DESCRIBED IN THE AGREEMENT, UNIFY MAKES NO WARRANTIES, EITHER EXPRESS, STATUTORY OR IMPLIED , INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. AILL OTHER RIGHTS AND REMEDIES SHALL BE EXCLUDED. Notwithstanding the above, Unify's statutory liability for intent, bodily damage, fraudulent behaviour, misrepresentation or under applicable product liability law shall not be affected hereby. This also applies to any other liability which cannot, by Applicable Law, be excluded by means of terms and conditions.

16. Intellectual Property Rights Indemnification

16.1 Unify will indemnify you against liability resulting from (a) a final judgment in proceedings brought by a third party against you that determines that Circuit infringes such third party's Intellectual Property Rights, or (b) a written settlement reached between you and the third party with respect to an asserted infringement of such third party's Intellectual Property Rights, provided that Unify gave

its prior written consent to the settlement, including reasonable attoorney's fees incurred in connection therewith.

16.2 Unify may also, at Unify's sole discretion and cost,procure from such third party the Intellectual Property Rights necessary to continue to provide Circuit to you ; or modify or replace the respective part of Circuit with substantially similar functionality in order to avoid the infringement. If Unify fails to provide these remedies, either Party may terminate the Agreement without regard to any minimum term and Unify will refund you any remaining prepaid Fees.

16.3 You will not acknowledge any infringement alleged by a third party. In the event you elect to cease using the part of Circuit affected by the alleged claim, or Circuit altogether, to minimize the expected damages or for other good reasons, you will inform the third party that the cessation of use does not imply any acknowledgment of the alleged infringement.

16.4 Unify's obligation to indemnify you is subject to you (a) notifying Unify in writing as soon as reasonably possible of any suspected or alleged infringement, (b) not making any admission which is or may be prejudicial to Unify without Unify's prior written consent; (c) giving Unify the right to defend against the allegation, including the negotiation of a settlement prior ; (d) providing Unify with reasonable assistance in defending against the alleged infringement; and (e) permitting Unify to provide the remedies set forth in section 16.2.

16.5 Unify's obligation to indemnify you shall be excluded to the extent that the alleged infringement is attributable to you and in particular if it is due to (a) misuse or any use of Circuit in a manner not authorized by or contrary to Unify's instructions or for a purpose not reasonably contemplated by Unify; (b) the use of any component of Circuit in combination with any hardware equipment, system environment or third-party applications not specifically approved by Unify or foreseen in the Documentation; (c) with respect to downloadable software and without limitation to your rights under Open Source Licenses, a modification thereof that was done without theprior written consent of Unify; (d) use of Circuit outside the scope of the rights of use granted to you under the Agreement; (e) with respect to downloadable software, your failure to use corrections provided or recommended by Unify, including generally available corrections and security fixes for the underlying hardware equipment, third party software or system environment; (f) any claims relating to a Standard; or (g) in any event where Unify followed a design or instruction furnished or given by you.

16.6 You shall defend and indemnify Unify against any losses, costs, expenses, demands or liabilities arising out of a claim by a third party alleging any infringement if (a) the claim arises from an event specified in section 16.5; (b) Unifys' ability to defend against the alleged claim has been prejudiced by your failure to comply with any requirements of section 16.4; or (c) the claim arises from the use of the Customer Network.

16.7 The provisions of this section 16 are exhaustive with respect to claims related to an alleged or actual infringement of third-party Intellectual Property Rights, unless Unify acted with intent or fraudulently. All other rights and remedies shall be excluded.

17. Liability

17.1 Subject to the provisions of this section 17, Unify's liability whether by way of indemnity or otherwise for each event or connected series of events arising out of or in connection with the Agreement shall be limited to the lesser of (i) 25% of the Agreement Value or (ii) one hundred thousand euros (EUR 100.000).Unify's aggregate liability under the Agreement shall be limited to an amount equal to 50% of the Agreement Value.

17.2 Unify is not liable for loss of profit indirect damages,, consequential damages , including loss of business, loss of contracts, interruption of business , expenditures incurred and frustrated expenses , loss or corruption of Circuit User Data, or, without limitation to section 16, claims raised by a third party against you, except as stated below.

Where the Agreement is governed by federal or sate law in the United States, the exclusion of liability set forth in the paragraph above will apply regardless of the form of action, whether in contract, tort, strict product liability, or otherwise, even if Unify is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and even if your remedies fail of their essential purpose.

17.3 In the event of loss or corruption of Circuit User Data, Unify's sole obligation is limited to the time and cost of restoring the data from the regular, general backups of the Circuit platform that Unify makes as part of Unify's normal operations. It is otherwise your obligation to ensure that important Circuit User Data is not stored on Circuit alone, and to provide for backups or copies of such Circuit User Data on a regular basis. You will not use Circuit as your sole means of storing such important data.

17.4 Nothing in the Agreement shall be construed to limit either Party's liability for fraud or fraudulent misrepresentation, intentional acts or omissions, gross negligence as well as liability under a guarantee, or any mandatory Applicable Laws, e.g. the German the Product Liability Act.

17.5 Unless specified otherwise in your applicable service package, your claims to service level credits as per **Annex - Service Level Agreement (SLA)** shall become time barred six (6) weeks after the Incident occurred. Claims with respect to Defects shall become time barred twelve (12) months from their respective accrual. All other claims that you may be entitled to shall become time barred six (6) months from date on which you became aware or should have become aware of the respective claim, but no later than twelve (12) months from their respective accrual. Any claims based on intent shall not be affected thereby.

18. Term and Termination

18.1 If you submit your registration for the Circuit subscription via the Circuit Portal, the Agreement becomes effective on the date Unify accepts your registration, as indicated through the confirmatory email Unifysends to you. If you submit the registration to Circuit "offline", i.e. in paper form, through one of our sales representatives or through a Unify Partner, the Agreement becomes effective on the date it is signed by both Parties or on the individually agreed date (each the "Effective Date").

18.2 The minimum term of a paid-for subscription is twelve (12) months from the Effective Date. Thereafter, the term shall renew automatically for consecutive twelve (12) month periods until the Agreement is terminated with a notice period of three (3) months to the end of the minimum term or any extension term. A different minimum term may apply, depending on special offers.

18.3 Nothing in this Agreement shall be construed to limit the right of a Party to terminate for good cause in accordance with Applicable Laws.

18.4 Without limitation to Unify's rights to terminate stipulated elsewhere in this Agreement, Unify may terminate the Agreement for good cause with immediate effect if

- you fail to make a due payment within thirty (30) days of the receipt of a written reminder ;
- you stop your payments due to a petition for the commencement of insolvency proceedings being filed against your assets, or if insolvency proceedings are opened against your assets, or if the opening of insolvency proceedings is rejected due to a lack of assets;

- if Unify is forced to do so in order to comply with Applicable Laws
- if Unify is ordered to do so by a competent court or authority or
- if you are otherwise in material breach of your obligations under the Agreement and fail to remedy the breach without undue delay but no later than thirty (30) days after receipt of a written reminder, unless a reminder is not necessary by law.

The second bullet shall not apply if your organization is a company incorporated under German law.

18.5 Unify may, without liability to you, suspend each and any Circuit User who does not comply with the terms of this Agreement, the **Acceptable Use Policy (AUP)** or the **Support Forum Rules (SFR)** for Circuit, provided the dispute resolution procedure was not successful. Unify may also suspend or terminate all or parts of your Circuit Tenancy without notice and without giving prior notice, if (a) Unify reasonably determines that you have grossly violated this Agreement or (b) Unify is ordered to do so by a court or authority in any country.

Unify may, upon such suspenstion or termination, deactivate or delete and bar access to all of your Circuit Users and Circuit User Data,without refund or compensation.

18.6 Upon receipt of the termination notice, Unify will provide a facility from which you can download your Circuit User's Circuit User Content prior to the expiry of the Agreement, unless Unify is prohibited to do so by Applicable Laws. In general, the download facility will be made available for up to thirty (30) days from expiry of the Agreement. Upon expiry of that period, Unify may completely remove all of your Circuit User Accounts together with all Circuit User Data that such Circuit Users may have (still) stored in Circuit.

Upon the termination becoming effective, you will erase or otherwise destroy all copies of the downloadable software, including apps or plugins that you may have obtained through your subscription to Circuit. With the exception of the download facility, you will also cease to use any part of Circuit even if it should still be available to you.

In the event Unify terminated the Agreement for good cause attributable to you, Unify may make access to the download facility dependant on the payment of all outstanding fees, and prepayment of the fees for the relevant time during which the download facility is to be provided.

18.7 Notwithstanding any minimum term commitment, Unify may terminate the Agreement at any time with effect to the end of a calendar month, giving at least one (1) year advance notice, if Unify declares Circuit to be end-of-life i.e. will cease to offer Circuit.

19. Changes to Circuit and the Agreement

19.1 Unify may, at any time and at its sole discretion, further develop and expand Circuit and may replace or update or extend certain functionalities of Circuit by functionally equivalent functions. Unify may select and/or modify at its sole discretion the equipment, hardware, software including utilities and tools, telecommunications equipment and terminals, IT systems and other items including the associated documentation (e.g. operating instructions, application guides and specifications) and the configuration used to provide Circuit to you, provided that this does not materially impair the provision of Circuit to you. Where feasible, Unify will announce possible changes in Circuit that affect the system requirements, adequately in advance.

19.2 Unify may at any time change the terms of this Agreement and the other terms and conditions referenced by it, or add or remove functionality or implement other changes that require changes on your side, such as a change of your browser, microphone settings or the exporting of data. In this case, Unifywill provide you with thirty (30) days notice by sending an email to the Customer

Contact, and, at Unify'sdiscretion, also in other suitable forms. If you do nothing and continue to use Circuit after the change becomes effective, you are deemed to have accepted the changed terms.

If you do not want to accept the changed terms, you may terminate your subscription to Circuit with effect as of the date the change to the terms of the Agreement becomes effective. In this case, you must send Unify a notice, through the Customer Contact.

If Unify has to implement a change because there is a requirement under Applicable Laws which cannot be reasonably and in a legally compliant manner be avoided or circumvented, Unify will still inform you of the changes, but you do not have a right to terminate.

19.3   With respect to adjustments of the Fees, **Annex Payment and Pricing Terms (PPT)** applies.

20.   Fees

The Fees and payment terms for Circuit are described in **Annex Payment and Pricing Terms (PPT)**.

21.   Subcontractors

You understand that Unify may, at itssole discretion, use subcontractors and third-party suppliers for the performance of any of Unify's obligations under the Agreement. Unify's obligations under section 9 shall not be limited thereby.

22.   Export Control Regulations

22.1   Any of Unify's obligations under the Agreement are subject to the proviso that fulfillment is not restricted by any impediments arising out of the Applicable Export Control Laws. You, the Customer, represent that you are not a citizen of an embargoed country or a prohibited end user under Applicable Export Control Laws.

22.2   For the purpose of this section 22, the term "Goods" refers to hardware and/or software and/or technology as well as corresponding documentation that is made available to you in any form, regardless of the mode of provision and explicitly including software that is made available in SaaS form, including Circuit).

If you transfer Goods delivered by Unify, or works or services (including all kinds of technical support) performed by Unify, to a third party, or if you re-export such Goods, works or services, you must comply with the Applicable Export Control Laws.

22.3   Prior to any transfer or export/re-export of Goods, works or services, you must in particular check and ensure by taking appropriate and verified contractual, technical and organizational measures that

- there will be no infringement of an embargo imposed by the Federal Republic of Germany and/or the European Union and/or the United States of America and/ or the United Nations by such transfer or export/re-export, by brokering of agreements concerning those Goods, works or services or by provision of other economic resources in connection with those Goods, works or services, also considering the limitations of domestic business and prohibitions of by-passing those embargos;
- such Goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless you have obtained the required authorization;

- you are at all times in compliance with the regulations of all applicable "Sanctioned Party Lists" or "Denied Persons Lists" or similar lists of the Federal Republic of Germany, the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein.

22.4   If so required to enable a competent export control or customs authority or Unify to conduct export control or customs checks, you will, upon Unify's or such authority' request, promptly provide Unify and the authority with all relevant information pertaining to the particular end-user or end-customer (e.g. the Circuit Users), the particular destination and the particular intended use of the Goods, works and services provided by Unify, as well as any export control restrictions required by Applicable Export Control Laws.

22.5   You will indemnify and hold harmless Unify from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance of Customer with this section 22 and any breach of Applicable Export Control Laws, and you will compensate Unify for all losses and expenses resulting thereof.

23.   Special Provisions for FREE subscriptions and trials

23.1   The terms of this section apply to FREE service package and trial subscriptions onlyand, take precedence over any other term of the Agreement with respect to Free service package or Trial subscriptions only. Please read carefully, as this kind of access to Circuit is subject to certain limitations not applicable to a paid-for subscription.

23.2   Under a subscription to the FREE service package for Circuit, Unify provide Circuit to you without charge.The FREE service package is subject to certain technical and functional limitations, as described in **Annex - Product and Service Description (PSD)**. You are under no obligation to purchase a paid-for subscription, and Unify is under no obligation to offer you a paid-for subscription.

23.3   You may upgrade from a FREE service package subscription to a paid-for subscription at any time. If so, you will have to choose which of your Circuit Users shall be upgraded to the paid-for subscription. Those of your Circuit Users that are not upgraded, and all of their Circuit User Data, will then be deleted.

23.4   Unify does not charge you for the FREE service package subscription, and in turn you will not charge Unify for anything you do with, or submit to, Circuit, including Feedback. You will bear any and all costs of your FREE service package subscription. You bear the risk of, and the cost of, any loss of data, loss of revenue, time and effort caused by your use of a Free service package subscription.

23.5   There is no specific time limit to the FREE service package subscription, and Unify does not warrant that subscriptions to the FREE service package will always be available. Unify may discontinue to allow, or terminate, FREE service package subscriptions, or alter the technical or functional limitations at any time, giving at least four (4) weeks advance notice. You should not use a Free Service Package subscription or trial subscription (as further described in Section 23.8 below) with any data that you cannot afford to lose or with data of which you do not have a separate backup physically stored outside of Circuit, unless you intend to purchase a subscription later. Keep this in mind when entering or creating or receiving data into Circuit under a FREE service package or a trial subscription.

23.6   Circuit is provided "as is" under the FREE or a trial subscriptions i.e. Unify will use reasonable efforts to provide Circuit to you, but Unify's service level commitments as per **Annex - Service Level Agreement (SLA)** do not apply. You understand that Circuit may not be available at all times

and that no SLA credits are available to you under these subscriptions. You accept that the availability of Circuit may even be less than the lowest commitment Unify gives to its paid-for subscribers.

You understand and accept that you assume all risks of use, quality, and performance with respect to the FREE or trial use. Unify disclaims any and all warranties with respect to Circuit and the related Documentation, whether express or implied, including specifically implied warranties of merchantability and fitness for a particular purpose. Unify disclaims any liability for any problems in or caused by your trial use of Circuit, whether direct, indirect, special, or consequential, including loss of profits.

23.7   Unify's liability for the injury of life, body or health, for intent or in the case of mandatory statutory liabilityshall remain as per the Applicable Law. Any other claims for damages based on whatever legal reason, in particular loss of profit, data and/or information, consequential harm caused by a Defect, including infringement of duties arising in connection with the contract or tort, shall be excluded.

Nothing in this section 23 intends to limit Unify's mandatory statutory liability for intent, bodily damage, fraudulent behaviour, misrepresentation or under applicable *product liability la*w. This also applies to any other liability which cannot, by Applicable Law, be excluded.

23.8   A trial subscription must be individually arranged with Unify or your Unify Partner. In addition to the provisions applicable to Free subscriptions above, the following applies to any Free subscription that has been upgraded to a trial subscription:

- You must have a FREE subscription which will then, for the term of the trial, be upgraded to have the advanced functionalities that are usually only available in the paid-for service packages.
- Unify does not charge you for the trial, but you understand that the service levels and SLA credits stipulated in **Annex - Service Level Agreement (SLA)** do not apply.
- Once your trial period nears its end, Unify or your Unify Partner may ask you if you would like to purchase a subscription.
- In the event you elect to upgrade to a paid-for service package, all of your existing Circuit Users and their Circuit User Data will be migrated and available under the new subscription plan.In the event you do not want to purchase a subscription, upon expiry of the trial term you and your Circuit Users will be downgraded again to the reduced set of functionalities available in the FREE service package subscription.
- Unify may elect to cease offering new trials at any time.

24.   General Provisions

24.1   Proprietary Rights

As to the trademarks, industrial designmarks, names or domain names of Unify and to those of Unify's suppliers (for the purpose of this clause, "Marks"), Unify and they retain ownership of all Intellectual Property Rights in all of the Marks associated with or used in or displayed with Circuit. You may not frame or utilize framing techniques to enclose any of Unify's or Unify's suppliers' Marks, or other of Unify's or Unify's supplier's proprietary information (including images, text, page layout, or form) without Unify's express written consent. You may not use any meta tags or any other "hidden text" utilizing Unify's or Unify's suppliers' Marks without the respective Mark owner's written consent.

24.2   Marketing

Unify may use your organization's name, Mark and logo on Unify'swebsite. Unify may also use your organization's name, Mark and logo in Unify'smarketing materials, provided you pre-approve such use, not to be unreasonably withheld, in writing. Without requiring prior approval Unify may state the fact that you are a customer of Unify and that you are using Circuit, without revealing specifics about the relationship.

24.3 Independent Parties

You and Unify each acts as an independent contractor and not as an agent, partner, or joint venture with the other Party for any purpose. Except as provided in the Agreement, neither you nor Unify shall have any right, power, or authority to act or to create any obligation, express or implied, on behalf of the other Party.

24.4 Entire Agreement, Written Form

The Agreement, and any documents incorporated or referenced to herein, constitute the entire agreement between you and Unify relating to the subject matter thereof and supersede all prior agreements between you and Unify with respect to that subject matter, whether written or oral. The Agreement may only be amended in writing. The same applies to a waiver of the written form requirement.

24.5 Assignment

You may not assign or transfer this Agreement, and any rights and licenses granted hereunder, unless otherwise provided for by mandatory statutory law. Unify may assign this Agreement without restriction and in compliance with all Applicable Law..

24.6 Force Majeure

Neither Party will be responsible for failure of performance due to a Force Majeure Event.

24.7 No Waiver

It is not to be understood as a formal waiver of Unify's rights, if Unify does not exercise or enforce one of its legal rights or remedies contained in this Agreement. Those rights or remedies will still be available to Unify.

24.8 Titles and Headings

The titles and headings of the various sections and paragraphs in the Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of the Agreement.

24.9 Severability

To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event any individual provision of the Agreement is illegal, invalid, void, voidable or unenforceable, the remainder of the Agreement will continue in full force and effect. The Parties shall agree upon an effective provision that, insofar as legally possible, most closely reflects what the Parties intended.

24.10 Applicable Law, court venue

24.10.1 If Agreement executed with Unify Germany:

The contractual relationship shall be governed by the substantive law of Germany without regard to its principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

The court venue shall be Munich, save where another court venue is mandatorily required by Applicable Laws.

24.10.2 If Agreement executed with Unify Inc.:

The contractual relationship shall be governed by the substantive law of the State of Florida without regard to its principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

The court venue shall be the federal and state courts of the State of Florida, save where another court venue is mandatorily required by Applicable Laws.

Annex - Product and Service Description (PSD)

Click here to download PDF

Annex - Service Level Agreement (SLA)

Version 2.0 as of August 2016

Click here to download PDF

1. Definitions

In addition to the terms defined elsewhere in the Agreement, the following definitions apply:

- "Availability" means the time during which Circuit is available for access and use, subject to the exclusions described in this **Annex - Service Level Agreement (SLA)**, in particular section 2.
- "Availability Exceptions" means circumstances which are beyond our control and under which Circuit cannot be provided in accordance with our SLA commitments, as outlined below in section 2.1c).
- "Contracted Month" means a full monthly billing cycle during the term of the subscription, as agreed with the Customer as per **Annex – Pricing and Payment Terms**.
- "Downtime" means the total minutes in a Contracted Month during which the entirety of Circuit Core Service is unavailable. The unavailability of individual service features is not counted as Downtime, unless such unavailability renders the Circuit Core Service unavailable or unaccessible.
- "Resolution" means the measures taken to resolve an Incident. A Resolution can also be a workaround.
- "Response Time" means the time between receipt of a service request by the UHD and the time the UHD first responds to that service request, subject to the applicable Service Hours
- "Verified Downtime" means Downtime claimed by the Customer and verified by us, as set forth in this **Annex - Service Level Agreement (SLA)**.

2. Availability of Circuit

2.1 General

We will use commercially reasonable efforts to provide Circuit with 99.9% Availability, except for Downtimes within the scope of the following exclusions:

a) Scheduled Maintenance

This is Downtime scheduled in advance to install bug-fixes, updates, and to conduct other maintenance work. Scheduled Maintenance will, in general, be done outside times of peak use of Circuit. You will be notified about Scheduled Maintenance in textform at least two (2) days in advance.

b) Emergency Maintenance

In urgent cases, Downtime may be scheduled immediately if it is required to prevent or avoid damages, or to install bug-fixes which cannot be delayed until the next Scheduled Maintenance period, e.g. a security fix for a vulnerability that is considered to be "high". We will attempt to notify you and the other customers, but a shorter notice period than for Scheduled Maintenance may apply.

c) Availability Exceptions

These are Downtimes caused by:

- Force Majeure Events;
- Problems, Incidents and Defects caused by you, such as

  - Despite our warnings, continue to use Circuit in a manner that is dangerous or wrongful, in particular if such use violates the Acceptable Use Policy (AUP);
  - Any unauthorized action or inaction from your employees, agents, contractors, or vendors with respect to Circuit, or if anyone gains access to our network by using your passwords or equipment without your permission;
  - Your failure to adhere to any required configurations, platforms, software or hardware;
  - Your failure to follow any applicable policies for acceptable use, including any uses of Circuit that violate the Acceptable Use Policy (AUP).

- Problems, Incidents and Defects caused by third parties's software (including any third party services or software such as browsers that you use) or third parties's hardware (including your network equipment), provided these are not under our control or were not recommended for Circuit;
- Failure of the Internet connection between you and our Point-of-Presence for the data centres providing Circuit;

Also excluded are any downtimes affecting Circuit User accounts that were not subject to a paid-for Service Package at the time of the Incident (including, but not limited to, the FREE service package subscriptions or trial subscriptions for example).

2.2 Availability Credits

a) In the event we fail to meet the availability targets for Circuit for the Contracted Month, you may claim an Availability Credit as per the table below.

You must submit your claim to an Availability Credit through your Customer Contact no later than ten (10) Business Days after the invoice date or, if later, the end of the billing period which is subject to the claim via a service request on Circuit Portal. The service request must contain the invoice and reasonable details on the claimed downtime and the availability level not met.

We will verify with reasonable judgement the claimed Downtime and respond to the claim within ten (10) Business Days, if the claim could be verified by us (Verified Downtime) and which Availability Credit will be applied.

b) The following Availability Credits refer to the Service Packages and Package options described in more detail in **Annex - Product and Services Description (PSD)** and **Annex – Pricing and Payment Terms**, and will be applied to Achieved Availability Levels:

Achieved Availability Level	Availability Credit per Service Package		
	ENTERPRISE, Package Options	PROFESSIONAL	TEAM
< 99.9 % but > 99.5%	2.5%	-	-
< 99.5% but > 99.0%	5%	2.5%	-
< 99.0% but > 98.5%	7.5%	5%	2.5%
< 98.5% but > 98.0%	10%	7.5%	5%
< 98.0% but > 97.5%	12.5%	10%	7.5%
< 97.5% but > 97.0%	15%	12.5%	10%
< 97.0% but > 96.5%	17.5%	15%	12.5%
< 96.5% but > 96.0%	20%	17.5%	15%
< 96.0% but > 95.5%	22.5%	20%	17.5%
< 95.5% but > 95.0%	25%	22.5%	20%
< 95.0% but > 90.0%	50%	25%	22.5%
< 90.0%	100%	50%	25%

For Package Options, the SLA credits for "ENTERPRISE" apply.

Calculation:

- Availability Credits refer to the invoice of the billing period which is subject to the claim.
- Credited Amount is calculated by multiplying the Availability Credits with the respective invoice amounts for each Service Package and Package Options and taking the sum over these products.
- The Achieved Availability Level is calculated as follows: the difference between (a) the total number of minutes of the Contracted Month less (b) the total number of minutes of the Qualified Downtime, divided by (c) the total number of minutes of the Contracted Month.
- The Qualified Downtime is calculated as follows: Verified Downtime less (a) the total number of minutes of Scheduled Maintenance and Emergency Maintenance of the Contracted Month and (b) the total number of minutes of Availability Exceptions, as defined above.

- Example for the calculation of Availability Credit:

  - Assumptions:

    - Billing period: May 12 to June 11
    - Invoiced amount for that month: 300 EUR for Circuit Users assigned to the ENTERPRISE Service Package, 200 EUR / PROFESSIONAL, 100 EUR / TEAM, and 100 EUR for Package Options (or USD or other invoice currency)
    - 300 minutes of Qualified Downtime in that billing priod (31 days).

  - Total number of minutes in the Contracted Month = 31days x 24h x 60mins = 44,640 minutes.

- Achieved Availability Level = (44,640 – 300) / 44,640 = 99.32%.
- The resulting Avaliability Credits are 5% for Circuit Users assigned to ENTERPRISE Service Package, 2.5% / PROFESSIONAL, 0% / TEAM, and 5% for Package Options.
- The Credited Amount calculates as this: 5% of 300 EUR for Circuit Users assigned to the ENTERPRISE Service Package, plus 2.5% of 200 EUR /PROFESSIONAL, plus 0% of 100 EUR / TEAM + 5% x 100 EUR for Package Options = 25 EUR (or USD or other invoice currency).

c) The Availability Credit will be applied to the invoice following our response to availability credit claim. The availability credit cannot exceed 100% of the invoiced amount, nor can availability credits be accumulated over several Contracted Months. There is no refund of Availability Credits for the last two months of the subscription in case the subscription is not renewed.

d) Eligibility:

In order to be eligible for Availability Credits, you must not be

- late with your monthly payments,
- in violation of the Acceptable Use Policy (AUP)
- otherwise in material breach of the Term of Service (TOS)

e) Availability Credits will only be awarded if you have a paid-for subscription to Circuit. Availability credits are not available if you are subscribed to a FREE service package trial subscription, or any other unpaid for test or evaluation subscription .

2.3   Availability Credits are your sole and exclusive remedy with respect to any claim for Defects in Circuit. In particular, no Fees will be refunded. This shall not affect your right to terminate the Agreement for cause, as stipulated in the Term of Service (TOS).

3.   Support for Circuit Users

3.1   Unify provides the following support to Circuit Users:

- Self help via the Circuit Support Portal,
- User Help Desk (UHD),
- Processing of service requests, i.e. the opening of tickets for Defects.

The different support facilities are described in more detail in **Annex - Product and Services Description (PSD)**. Some of these support facilities are only available to you if you have subscribed to the corresponding Service Package.

3.2   The Circuit Self Service facilities are an integral part of Circuit and therefore are covered by the preceding section on the availability of Circuit. There is no separate availability commitment for the Circuit Support Portal.

3.3   The availability of the UHD is described **Annex - Product and Services Description (PSD)**. We will make commercially reasonable efforts to respond to user requests as quickly as possible. There are no SLA credits for UHD services.

3.4   Circuit Users may open service requests via the Circuit Support Portal or by phone to report Incidents or Defects. Details on the procedure are described in **Annex - Product and Services Description (PSD)**.

We will make commercially reasonable efforts to achieve the Response Time objective described below, depending on the priority level of the service request:

Priority	Response Time objective
Priority Level 1	1 hour
Priority Level 2	2 hours
Priority Level 3	24 hours

3.5   Response Times are measured from the point in time on when the service request is received by Unify if that point in time falls within a Service Hour of the UHD, otherwise from when the next Service Hour period commences. If the Response Time for a service request exceeds the Service Hour of the UHD, the measuring of the Response Time will continue once the subsequent Service Hour period of the UHD begins. The measuring ends once the service request has been responded to, which can include email notification of the submitting Circuit User.

3.6   Priority Levels will be defined by us when the Circuit User places the service request. We reserve the right to re-set the Priority Level as the service request is handled per the definitions below as part of the response to the service request, giving reasons.

- "Priority Level 1" means Incidents where Circuit in its entirety, as it is described in the Agreement and in particular in **Annex - Product and Services Description (PSD)**, is not available to all of your Circuit Users.
- "Priority Level 2" means Incidents where relevant parts or functionalities of Circuit, such as the search function, storage access, content sharing, etc., as they are described in the Agreement and in particular in **Annex - Product and Services Description (PSD)** are not available.
- "Priority Level 3" means incidents that are not assigned to priority levels 1 and 2.

There is not credit if the objectives for the Response Time and the provision of a Resolution are not met.

Annex - Pricing and Payment Terms (PPT) for Circuit

Version 2.0 as of August 2016

Click here to download PDF.

1.   Fees & Pricing plan

1.1   Monthly Fees

a) Service Packages

Circuit is available in the following packages and corresponding monthly fees per seat:

Service Package	FREE	TEAM	PROFESSIONAL	ENTERPRISE
Fee per user and month	-/-	USD 3,95 EUR 3,95 GBP 2,95	USD 6,95 EUR 6,95 GBP 4,95	USD 14,95 EUR 14,95 GBP 10,95

Service Package	FREE	TEAM	PROFESSIONAL	ENTERPRISE
		CHF 3,95	CHF 6,95	CHF 14,95

Details on the functionality included in each of the service packages can be found in **Annex - Product and Service Description (PSD)**. Other service packages may be added over time.

Once either the booked volume limits are reached (e.g. storage) or additional functionality is required, you must decide whether to upgrade to a higher-level paid-for service package of Circuit, and also which of your Circuit Users shall be converted. You cannot downgrade Circuit Users to a lower-level service package.

b) Package Options

Package options are either increments of existing or new functionality as addon to available packages. The table below describes avaible package options and conditions

Package option	Available in Service Packages	Price per Package Option and Month	Amend
Additional Storage: 100 GB	TEAM PROFESSIONAL ENTERPRISE	USD 20,00 EUR 20,00 GBP 15,00 CHF 20,00	Only increase, no decrease

Package options are only available for paid-for Service Packages as described in sec. 1.1a). Other package options my be added over time.

c) Free Service Package Subscription

With FREE service package subscriptions, Unify offers a service package with a limited set of functionality that can be used free-of-charge. See the provisions for FREE in the TOS for details. Once you decide to convert to a paid-for subscription, you must upgrade all of your Circuit Users that you wish to keep to the Service Package that you chose. Circuit Users added to a FREE service package subscription that are not upgraded will be deleted from your Circuit Tenancy, including their Circuit User Data.

2. Invoices, charges

2.1 Fees with a fixed amount will be invoiced and charged per calendar month and in advance. They will be adjusted *pro rata temporis* for the remainder of the calendar month in which you sign up for Circuit and for the calendar month in which your subscription ends. We will endeavor to process individually arranged billing cycles, if required. Please note that in this case we will continue to use a calendar month as a basis for the calculation of the service levels as per **Annex - Service Level Agreement (SLA)**. This may result in Availability Credits beeing credited to your invoice a month later.

2.2 If your use of Circuit exceeds the limits of any included consumption volume, e.g. storage cpacity, additional fees may apply, as set forth above. Such costs will be clearly stated before the cost occurs and Unify then current list prices shall apply.

2.3 Unify may charge you separately for any service or item or functionality that is not within the scope of **Annex - Product and Service Description (PSD)**, . In these cases, Unify's then current list

prices for such services or items or functionalities shall apply. Where such services are charged on a time/material basis, they are calculated based on working time, travel and waiting time expended. Where hourly or monthly rates are billed, each hour or month started is billed using a pro-rated billing rate. For services provided outside of Unify's normal working hours, surcharges apply. Unify may also charge you for ancillary costs, e.g. costs for necessary travel and lodging. You may, at any time before ordering additional services, ask Unify for the current list prices and the working hours applicable to your location.

2.4 All invoices for Circuit will automatically be sent via email to the email address you specified. Emailed invoices are deemed to have been received by you on the date that they were sent to you. A paper copy can be sent upon request, but this will not postpone the date of receipt.

3. Payment terms

3.1 You agree that Unify may charge you through the payment instrument that you specified when you signed up for Circuit (e.g. credit card, direct debit to your account, etc.) to charge you all amounts that become due while you use Circuit, including any recurring Fees. You must make sure that the payment instrument you specified is valid and chargeable by Unify whenever Fees become due.

3.2 Generally, all amounts are payable and due ten (10) days from the date of Unify's invoice, without offsets or deductions of any kind. Payment must be made in the currency indicated on the invoice.

3.3 If you have submitted a credit card as the payment instrument, the credit card may be also charged at the date of Unify's invoice.

3.4 If you authorized Unify to make a recurring Fee to your credit card, Unify may charge the outstanding amounts automatically and upon the respective due date to your card, usually every month. One-time payments shall, however, be charged as soon as they become due as per the invoice.

3.5 If you authorized Unify to make a direct debit to your account, Unify may charge the outstanding amounts automatically and upon the respective due date. One-time payments shall, however, be charged to your account no earlier than five (5) working days after receipt of the invoice. You are responsible to ensure that there are sufficient funds in your account at the due date(s) and if not, you shall compensate Unify for any cost or loss resulting from that.

3.6 If your bank account is with a bank located in the Single Euro Payments Area (SEPA), you may be asked to provide a SEPA mandate to authorize Unify to debit your account. You agree that the advance notice period before the account is debited is one (1) day.

3.7 Except as expressly set forth otherwise in this Agreement, all your payments are non-cancellable and non-refundable. This also applies to any prepaid amounts if Unify terminates the Agreement for a good cause attributable to you.

4. Disputes and late charges

4.1 If you believe that your invoice is incorrect, you must contact Unify in writing within sixty (60) days of the date of the invoice showing the amount in question to be eligible to receive an adjustment or credit. Unify may suspend your access to Circuit for non-payment of undisputed fees. This period of time may be adjusted as per the SEPA mandate, where applicable. For the avoidance of doubt, this does not apply to claims for Availability Credits, which are solely governed by **Annex - Service Level Agreement (SLA)**.

4.2 You may only offset or withhold payments if Unify has expressly agreed to this in writing, or if your claims are undisputed by Unify, or if they are finally established by a competent court or authority.

4.3 Unify may charge you interest at the then current, highest permissible statutory rate for businesses on any monthly payment that is not being reasonably disputed by you and that is not received when due. If legal enforcement or third party collection efforts are necessary, you shall pay all reasonable legal fees and costs incurred by Unify.

5. Taxes

The Fees are exclusive of all taxes, levies, or duties. You are solely responsible for payment of all such taxes, levies, or duties, excluding only the taxes based solely on Unify's income.

If Unify has the legal obligation to pay or collect taxes to taxing authorities for which you are responsible, the appropriate amount shall be invoiced to and paid by you unless you provide Unify with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. Changes to Fees

6.1 Unify may at any time adjust the Fees, provided that such adjustment reflects objectively justified changes in Unify's costs for personnel, material, hosting, third-party provided services for Circuit or other costs factors. In this case, Unify will provide you with thirty (30) days prior notice by sending an email to the Customer Contact. If a minimum term was agreed, Unify shall only increase the Fees once the first twelve (12) months of such a minimum term have expired.

6.2 If you do not want to accept the adjustment, you may extaordinarily terminate your subscription to Circuit with effect as of the date the adjustment becomes effective. In this case, you will send Unify a written notice, e.g. through the Customer Contact.

If the change to the Fees is mandatory for Unify because of Applicable Laws, e.g. a change in taxes, Unify will still inform you of the changes, but you will not have the right for extaordinary termination.

6.3 Unify may, at any time, add features and functionalities to Circuit that Unify may make available only for additional fees. To upgrade your subscription, you may need to log in with the Circuit Tenancy Administrator account or contact your sales representative at Unify or your Unify Partner.

Annex – Definitions

Version 2.0 as of August 2016

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The capitalized terms used in this Agreement and the documents referenced herein are defined as follows:

"Acceptable Use Policy" or "AUP" means a framework of rules and regulations that aim to ensure that everyone who uses Circuit enjoys a productive, disruption-free and safe use of Circuit. It describes what Unify deems to be acceptable use of Circuit, what not, and what will happen if there is a violation of the AUP.

"Agreement" means, collectively, terms and conditions under which you are granted access to Circuit and all other documents referenced therein. The Agreement consists of the Terms of Service (TOS) for Circuit, together with the Annexes Product and Service Description (PSD), Payment and Pricing Terms (PPT), the Service Level Agreement (SLA) and this Annex Definitions, as well as the End User License

Agreement (EULA) for Circuit, the Acceptable Use Policy (AUP), the Support Forum Rules (SFR), the Data Privacy Statement (DPS) and, where applicable, the Data Processing Agreement (DPA).

"Agreement Value" means the total amount of the recurring Fees you actually paid to Unify under the Agreement in the twelve (12) month period preceding the event that leads to liability or, if the term of the Agreement has been less than twelve (12) months, the total amount of the recurring Fees that would have been paid had the Agreement continued for twelve (12) months, calculated as per the median amount of the Fees that were already paid to Unify until the relevant event.

"Applicable Export Control Laws" means any national and international foreign trade and customs requirements or any embargos or other sanctions such as anti-terrorism-laws, denied persons lists or similar stipulated by the Federal Republic of Germany, the European Union, the United States of America and other applicable national export laws, e.g. from the country/jurisdiction where you or a Circuit User have its place of business. Applicable Export control Laws are a subset of Applicable Laws.

"Applicable Laws" means and includes all laws, statutes, regulations, directions, guidelines and codes of conduct of any governmental or Regulator of competent jurisdiction and any orders of any Regulator or other administration or court or other tribunal of competent jurisdiction which are applicable to this Agreement, you, Unify or to the performance of either your or Unify's obligations under this Agreement.

"Business Day" means the days of the week during which most businesses are operating, usually Monday to Friday except local public holidays or bank holidays. In order to determine the timeliness of a notice, the schedule of Business Days applicable to the receiving party shall prevail, while the timeliness of an action shall be determined by the schedule of Business Days applicable to the party obliged to take the action.

"Circuit" means, collectively, all "Circuit", "Unify Circuit" or "Circuit by Unify" branded products and services provided by Unify to you in connection with Circuit, as further described in the Agreement.

"Circuit App" means an application for mobile devices which can be used to access Circuit.

"Circuit Core Services" means the application "Circuit" as defined in **Annex - Product and Service Description (PSD)**. The ancilliary facilities of Circuit, such as the Circuit Portal's section attending to the management of (new) subscriptions, the Circuit Support Forum, or optional plugins or features that must be activated and/or downloaded separately, are excluded.

"Circuit Directory" means a directory of the Circuit Users assigned to you, which can be browsed by every other Circuit User in your Circuit Tenancy.

"Circuit Enterprise User" means a Circuit User account which can make use of the full functionality of Circuit, as compared to a Circuit Guest User account that has only limited funtionality.

"Circuit Portal" means the website where you log in to Circuit and where subscriptions to Circuits are entered into.

"Circuit Self Service" means a set of self-service support facilities for Circuit, such as a FAQ and the Circuit Support Forum.

"Circuit Support Forum" means a section of the Circuit Support Portal which allows Circuit Users from all customers and Circuit Tenancies to discuss their questions regarding Circuit, and to post and receive troubleshooting information. Use of the Circuit Support Forum is governed by the **Support Forum Rules (SFR)**.

"Circuit Support Portal" means a web based form of support from which the different forms of support provided by Unify can be accessed. The exact scope of the support is determined by the applicable service package.

"Circuit Tenancy" means the logically separated segment or domain on the Circuit platform that is dedicated to you and your Circuit Users.

"Circuit Tenancy Administrator" refers to a Circuit Enterprise User who has been granted access to the Customer's administration console for Circuit. The Circuit Tenancy Administrator may create Circuit Enterprise Users and other Circuit Users, and may grant other Circuit Enterprise Users access to the administration console to, thereby making them also a Circuit Tenancy Administrator. The first Circuit Tenancy Administrator is automatically created upon signup to Circuit together with the Customer Contact. Unify recommends that the Customer uses special care when selecting and storing the password for the account of the Circuit Tenancy Administrator.

"Circuit User" means, collectively, the different kind of user accounts linked to a particular customer. You are responsible for all activities of your Circuit Users and of their compliance with the Agreement and in particular their compliance with the **Acceptable Use Policy (AUP)**.

"Circuit User Contact Data" includes name, address, phone number, profile information, email address, title, time zone and other contact information that Unify may collect through an Circuit User's use of Circuit, or which you or the Circuit User may enter, or have entered, as part of the administration of your Circuit Tenancy or Circuit User account.

"Circuit User Data" or "Circuit User Content" includes, but is not limited to, all data, including all text, sound, software, image files, documents, photos, presentation slides, audio and/or video recordings, comments, questions, call entries and logs, transcripts, or other content, information or files that a Circuit User submits to Circuit, receives through Circuit, generates through using Circuit, stores inside Circuit, or otherwise creates by the use of Circuit. In other words, it means all data about and from you or one of your Circuit Users that was not there before you signed up for Circuit. It can also include, collectively, Circuit User Contact Data, Usage Data, and Support Data. Circuit User Data will often also contain Personal Data.

"Confidential Information" means all information and data, which a Party has received orally, in writing, electronically or otherwise from or on behalf of the other Party in connection with the Agreement, including all business, commercial and technical information and data, unless, according to the judgment of a prudent business man, such information and data cannot be considered as being of confidential nature.

"Conversation" refers to a number of conversation items (messages, files, realtime meetings via phone call, video, screenshare, etc.) shared between and viewable by all participants. Conversations can be "private" – in that users need to be explicitly added to the Conversation see the content or they can be "open" – in that any Circuit User can choose to join . Conversations are moderated by the Conversation participants, with anyone in the Conversation having the capability to remove other people if necessary.

"Cross Tenancy Guest User" is an Circuit User created in another Circuit Tenancy, who is added to a Conversation in your Circuit Tenancy. Once the Circuit User from the other Circuit Tenancy has accepted the invitation, they have full access to the content of the specified Conversation, but they cannot access any other Conversation hosted in your Circuit Tenancy. A Cross Tenancy Guest User does not count against the number of Circuit User accounts you subscribed to.

"Customer", also referred to as "you", means you, your business or organization who is party to the Agreement and who is therefore responsible for the Circuit Users and their Circuit User Data in its Circuit Tenancy.

"Customer Contact" is a person within your business or organization who is assigned to be Unify's primary contact and who has the authority to act on behalf of your business or organization in respect of all day-to-day activities relating to Circuit. This person must be named during the registration process, will

also be the first Circuit User created in your Circuit Tenancy, and will therefore also (initially) hold the role of the Circuit Tenancy Administrator.

"Customer IT Policies" means the rules and regulations governing the use of your IT-Systems, e.g. your acceptable use policies.

"Customer Network" means any part of your network and the devices operated in it, including personal computers, active and passive data network equipment, telecommunications network applications and all associated equipment (including third party network components) which may be used for Circuit.

"Data Processing Agreement" or "DPA" is an agreement for commissioned data processing under which we will collect, store, and process Personal Data.

"Defect" means a reproducible failure of Circuit to comply with the specification of Circuit as described in **Annex - Product and Service Description (PSD)**.

"Documentation" means the technical and/or functional descriptions that are provided or made available to the Customer along with Circuit. The Documentation will in general be provided online. The Documentation includes, among other things, the description of performance characteristics, features or hardware and software requirements. If and to the extent required by the respective rights holder, the Documentation also comprises of the Open Source License texts or the special license conditions of a Freeware vendor or other commercial third party vendor of software.

"Effective Date" means the date on which the Agreement comes into force, as further described in the **Terms of Service (TOS)**.

 "End User License Agreement" or "EULA" means our set of license terms and conditions for the use of software by end users. While Circuit is, in principle, a cloud-based application, some of its components need to be downloaded and installed, such as apps for smartphones and tablets. These components are covered by the EULA. In addition, Open Source Licenses and Third Party EULAs may apply.

"EU Data Protection Requirements" means the EU Data Protection Directive 95/46/EC, or any directive or regulation replacing it.

"Fees" means the fees and prices for Circuit, as agreed between the Parties. There may be monthly, usage based or one-time Fees. See **Annex - Payment and Pricing Terms (PPT)** for details.

"Force Majeure Event" means any event beyond the reasonable control of a Party, including (i) damage to or destruction or compulsory purchase of the premises or other property belonging to the affected Party, (ii) fire, explosion, accident, lightning damage, electromagnetic interference; (iii) storm, earthquake, hurricane, tornado, flood, volcanic eruption or other natural disaster; (iv) war, threat of war, act of terrorism, insurrection, rebellion, riot or other civil unrest; (v) epidemics, pandemics, quarantine restrictions or other public health restrictions or advisories; (vi) strikes or lockouts or other labor interruptions; (vii) disruption to transport services; (viii) sanctions, embargoes or lack of materials, supplies or utilities, breaking off of diplomatic relations; (ix) the failure of any applicable governmental authority to issue any licenses or approvals, or the suspension, termination or revocation of any licenses or approvals, required for the operation of the affected Party's business or the performance of services, or any other circumstance as a result of which performance by the affected party is prevented by law; or (x) in the case of Unify, the occurrence of any of the aforementioned events to its subcontractors or suppliers which result in their delay or failure to perform.

"Freeware" means a computer program which may be used without payment or other compensation (for example, by advertising). Freeware may be subject to special license conditions of the vendor, which, for example, may limit the right to distribute or redistribute the Freeware. Freeware may have functional limitations which a commercial version does not have. In general, the vendor of a Freeware does not grant access to the source code of the Freeware.

"Guest User" means Circuit User accounts for users outside your business or organization, to whom you want to provide temporary access to Circuit, under your full and sole responsibility and cost.

"Incident" means an event that affects the deliivery of Circuit, e.g. a case of non-performance of Circuit, or the failure to achieve a Service Level. Incidents are further described in **Annex - Product and Service Description (PSD)**.

"Intellectual Property Rights" means copyrights (including moral rights), patents, protected designs, registered designs, design rights, utility models, trademarks, service marks, business secrets, know-how, database rights, personal rights, company or business names, domain names and other rights of a similar type, in any country or jurisdiction, including all registrations, applications for registration, rights to apply for registration and licenses for or relating to such rights.

"Limited Role Guest User"[1] means a Circuit User account that has limited capabilities, e.g. it has no access to "open" Conversations. It is added to your Circuit Tenancy by your Circuit Tenancy Administrator. The Limited Role Guest User and his User Content are visible and seachable within your Circuit Tenancy. A Limited Role Guest Users does count against the number of Circuit User accounts you subscribed to.

"Open Source Software" or "OSS" means a computer program which is, in principle, available at no costs. which is licensed under an Open Source License and that is available either (a) in source code form only, or (b) in (executable) object code form and the source code is delivered together with the executable code.

"Open Source License" or "OSS License" means license terms to a computer program that give the user, beyond the right to use without license fee or royalty, rights of use which are usually reserved usually for the owner of the copyright to the computer program, for example the right to analyze the computer program as desired, to edit it, to merge it with other computer programs or to derive their own computer programs thereof and to distribute the results thereof (for the purposes of this provision, collectively referred to as "Work"). In turn, such license terms require that at least one of the following conditions is met: (a) the source code or design information regarding the Work must be made available; (b) the right to create derivative works regarding the Work must be granted; (c) a royalty-free license to any third party to use the intellectual property rights of the party embodied in the Work or (d) to identify the owner of the copyright to the unmodified Open Source Software. Open Source Licenses are, by example and without limitation, any version of the GNU General Public License (GPL) or the GNU Lesser General Public License (LGPL) or the Affero General Public License (AGPL) or similar open-source licenses, "free" licenses, and the general licenses to these as "public domain".

"Party" refers to either you or us, and "Parties" to you and us, collectively.

"Personal Data" means individual elements of information concerning the personal or material circumstances of an identified or identifiable natural person, as defined by Applicable Law.

"Product and Service Description" or "PSD" means the description of Circuit and the services associated with it. Some functions of Circuit and the associated services may only be available if you subscribe to an eligible service package. The PSD is an integral part of the Agreement.

"Professional Services" are individual, custom services rendered by us under terms negotiated separately from the Agreement. In the context of Circuit and depending on availability and technical feasibility, Professional Services might be used to pre-populate a large Circuit Tenancy, to establish interfaces between Circuit and other IT systems, or other consulting concerning the use of Circuit.

"Pricing and Payment Terms" or "PPT" is incorporated in this Agreement as **Annex - Pricing and Payment Terms (PPT)** and describes the prices and payment terms that are a applicable to your use of Circuit.

"Publish" means any uploading, publishing, displaying, linking to or otherwise making available any User Content in Circuit.

"Regulator" means any public authority which has or from time to time may have supervisory or regulatory authority over us and/or Circuit in accordance with Applicable Laws over any aspect of the performance or fulfilment of any rights, entitlements or obligations related to Circuit.

"Resolution" - Measures taken to resolve an incident. Can also be a workaround.

"Service Level Agreement" or "SLA" is incorporated in this Agreement as **Annex - Service Level Agreement (SLA)** and describes, basically, the level of service that you can expect expect from Unify with regard to Circuit.

"Service Levels" means the service performance metrics with corresponding service level objectives for the provision of Circuit.

"Session Guest User"[2] is a temporary Circuit User who is invited to a meeting (e.g. telco, videoconference, screenshare, etc.) hosted inside a Conversation of your Circuit Tenancy. The Session Guest User only sees what is shared in the meeting. After the end of the meeting they will continue to have access to the content of the meeting for one (1) month. A Session Guest User does not count against the number of Circuit User accounts you subscribed to.

"Standard" means any technical specification that is distributed, published, or otherwise made available by any consortium, standards organization, special interest group, or like entity, for the purpose of widespread industry adoption.

"Service Day" means a day on which Unify provides a particular Circuit Support Service, such as the UHD. Service Days for different Circuit support Services may vary, depending on the relevant Circuit Support Service and the applicable Circuit Support Plan.

"Service Hours" means the times on a Service Day on which a particular Circuit Support Service such as the UHD is available. Service Times may vary, depending on the relevant Circuit Support Service and the applicable Circuit Support Plan.

"Standard" means any technical specification that is distributed, published, or otherwise made available by any consortium, standards organization, special interest group, or like entity, for the purpose of widespread industry adoption.

"Support Data" means Usage Data that is collected when a Circuit User submits a support request, including information about the Circuit User's hardware and software environment when the fault occurred, and other related details, such as contact or authentication information, chat session personalization, data resulting from diagnostics, system and registry data about software installations, hardware configurations, and error-tracking files or screenshots.

"Terms of Service" or "TOS" means the core terms and conditions under which we makes Circuit available. It is part of the Agreement.

"Third Party End User License Agreement" or "Third Party EULA" means a set of license terms and conditions from the vendor of a commercial third party component or a Freeware, whose acceptance is made a prerequisite by such vendor for granting the right to use the respective third party component or Freeware.

"Unify", also referred to as "we", means the Unify entity with whom you enter into the Agreement.

"Unify Partner" means a distributor, reseller, system-integrator, sales agent or other organization authorized by us to solicit customers for Circuit and to offer you subscriptions to Circuit. In general, a

Unify Partner will arrange for a contract between you and us. A true reseller providing Circuit on their own account will indicate so in their terms and conditions.

"<u>Usage Data</u>" means statistical data, analytics, trends and usage information derived from each Circuit User's use of Circuit. Usage Data includes, by example and without limitation, aggregated quantitative information about number of active users, IP-address from where the Circuit User logs in, activity of the Circuit User, used bandwidth, storage space or CPU capacity.

"<u>User Account</u>" means an account created by you within the Circuit administration console, usually for an Circuit User. Unless you give us other directions, we will keep the Circuit User Data related to that User Account for the term of your subscription.

"<u>User Help Desk</u>" or UHD is a special helpdesk service that provides dedicated support for Circuit.