# Terms of Service (TOS) for Circuit

Version 2.0 as of August 2016

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 Infor-

mation 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 work-around 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 mis-representation, 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)**.