

Cloud Services Agreement

for Unify Cloud Services

Effective May 15, 2018

This Cloud Services Agreement (the "Agreement or "CSA") with all its annexes cancels and replaces the Terms of Service (TOS) for Circuit (version V2.0 as of August 2016).

1 Click & Accept, Contracting Parties

By clicking "Accept" you accept and acknowledge that you have read this Agreement including the attached [Terms of Service Production \(TOSP\)](#) and the [Data Processing Agreements \(DPA\)](#). You also represent and warrant that you have the authority to bind your business or organization (herein the "Customer") on whose behalf you accept the CSA.

This CSA is executed by and between Customer and

Unify Software and Solutions GmbH & Co. KG

Otto-Hahn-Ring 6

81739 München

referred to herein as "Unify" and Unify and Customer together as "Parties",

If you do not agree to this CSA, please click the "Cancel"/"Back" button and do not use Unify Cloud Services.

2 Contractual documents

The Agreement includes the following Annexes:

- a) [Terms of Service Production \(TOSP\) and annexes therein](#)
- b) [Acceptable Use Policy \(AUP\)](#)
- c) [Support Forum Rules \(SFR\)](#)
- d) [Pricing and Payment Terms \(PPT\)](#)
- e) [Data Processing Agreement \(DPA\) for Unify Cloud Services](#)
- f) Data Processing Agreement (DPA) Resale and Co-Delivery Services and Commercial Processing

which can be found under the respective links, and which form part of the Agreement.

3 Data Protection

For providing of Unify Cloud Services, Unify processes Personal Data of

- a) Individuals using Unify Cloud Services., and of
- b) Individuals serving as customer or billing contacts for Unify Cloud Services.

These two processing streams fall under applicable data protection laws. Customer and Unify expressly agree to the shared responsibilities for two processing streams, as stipulated in the two DPAs for processing stream a) and b). The DPAs form part of this CSA.

Upon clicking “Accept”, Customer executes the two DPAs with Unify.

4 Free and Paid Subscription Plans

4.1 Unify provides Unify Cloud Services on a subscription basis and offers free and paid subscription plans. Free subscription plans offer limited functionality and / or a limited term of usage. More details can be found in the annex Product and Service Description to the TOSP .

Unless agreed upon by Unify and Customer in writing, Unify will assign a free subscription plan to Customer upon clicking “Accept”, i.e. Unify will not charge the Customer for the free Cloud Services that are being provided.

4.2 Customer may choose to convert from a free to a paid subscription plan either online on Unify Cloud Services under Manage Subscriptions in Tenant Administration or by placing an order of a paid subscription plan with a Unify or Atos sales office in countries where the respective Unify Cloud Service is released. Unless agreed upon otherwise, this CSA between customer and Unify will remain in effect and Customer will be invoiced by Unify for providing Unify Cloud Services. The local Unify / Atos entity (sales office) then acts as a sales agent only.

4.3 If Customer obtains a paid subscription plan directly from the local Unify / Atos entity (sales office), this CSA with Unify terminates as soon as a cloud services agreement with the Unify / Atos entity goes into effect. See section 6.2.

5 Remuneration for Paid Subscription Plans with Unify

Pricing and payment terms for Unify Cloud Services are defined in Annex Pricing and Payment Terms to this CSA. Different pricing and payment terms quoted by Unify or Atos local companies override pricing and payment terms published in the Annex.

6 Term and Termination

6.1 The term of this CSA and the DPAs, the conditions and effects of termination are stipulated in section 14 or the TOSP.

6.2 In addition, this CSA is terminated under the following circumstances:

- Customer transitions the subscription account of Unify Cloud Services from a cloud services agreement with Unify to a cloud services agreement with a local Unify / Atos entity. (see section 4.3)
- Unify accepts, under its sole discretion, a request by a Unify-accredited reseller to transfer Customer’s subscription account of Unify Cloud Services from a cloud services agreement with Unify to a cloud services agreement held by that reseller, Customer accepts this transition, and a new cloud services agreement between Customer and reseller is in place

In these cases, Unify will continue to provide the cloud service to customer, and termination clause 14.3 of the TOSP does not go into effect. The DPAs between Customer and Unify remain in effect.

7 Confidentiality

“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.

- 7.1 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.

- 7.2 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.

- 7.3 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.
- 7.4 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.

8 Miscellaneous

8.1 Marketing

Unify may use your organization's name, Mark and logo on Unify's website. Unify may also use your organization's name, Mark and logo in Unify's marketing 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 Unify Cloud Services, without revealing specifics about the relationship.

8.2 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 CSA, 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.

8.3 Entire Agreement, Written Form

The CSA, 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 CSA may only be amended in writing. The same applies to a waiver of the written form requirement.

8.4 Assignment

Neither Party may transfer, sublicense or assign any of its rights or obligations under this CSA without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed. Provided, however, that Unify may, without such consent, assign this CSA and its rights and obligations hereunder (a) to an Atos Affiliate, or (b) in connection with the transfer or sale of all or substantially all of its business to which this CSA relates, or in the event of its merger, consolidation, change in control or similar transaction.

Any attempted transfer, sublicense or assignment by either party in violation of this Section will be null and void.

Subject to the foregoing, this CSA will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

8.5 Force Majeure

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any Force Majeure Event.

8.6 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.

8.7 Applicable Law / Court Venue

This Agreement shall be governed by the substantive law of Germany without regard to its principles of conflicts of laws.

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

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	USD 6,95	USD 14,95
		EUR 3,95	EUR 6,95	EUR 14,95
		GBP 2,95	GBP 4,95	GBP 10,95
		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) 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 being 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 capacity, 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 All amounts are payable and due ten (10) days from the date of Unify's invoice. Payment must be made in the currency indicated on the invoice.

Customer's payment is not subject to any set off claims or rights of offset of any kind, including, but not limited to Customer's voluntary inactive use of the Licenses.

- 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 **Late payment interest.** If You, acting reasonably at all times, fails to pay an undisputed invoice as required herein, Unify reserves the right to (i) charge a late-payment interest on the due amounts, of three (3) times the applicable annual legal interest rate for all undisputed amounts past due date or the then applicable legal interest rate, whichever is the lowest; (ii) charge You for all reasonable costs and expenses incurred by Unify relating to the collection of undisputed past due amounts (including reasonable collection agency fees, attorneys' fees and the like).

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 extraordinarily 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 extraordinary 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.