

## General Terms and Conditions for Software Subscription for Enterprises

(as of 01 July 2019)

Software Subscription is a bundled offering from Unify (depending on which is the contracting entity either: Unify Software and Solutions GmbH & Co. KG or Unify Communications and Collaboration GmbH & Co. KG) for its OpenScape software products. Under Software Subscription Unify not only provides for the term of the contract the necessary Base Software and the corresponding Client Access Licenses or as the case may be the necessary Single User Software but also access to Updates for the subscribed software products and the right to upgrade to the latest version of the subscribed software products (Software Service).

At the initial sale the Customer has to subscribe a minimum of 500 OpenScape Voice and/or OpenScape UC Subscriber Licenses

An (existing) service agreement - at a minimum a Total Care service plan - is a prerequisite for Software Subscription.

Hardware, hardware-based products and other products as well as installation and labor are not included in the Software Subscription program and have to be purchased separately.

### 1 Definitions & Interpretations

- 1.1 "Base Software" or "Base Product" shall mean a program for installation on a server computer (host) and which Clients access to make use of the functionalities of the program.
  - 1.2 "Client Access License" or "CAL" shall mean a software license for authorizing a Client to use the corresponding Base Software.
  - 1.3 "Client" or "User" shall mean, depending on the type of functionalities which the Base Software provides, individual persons, agents, equipment, devices, identities or communication channels and the like, which are subject to the CAL (depending on the type of CAL).
  - 1.4 "Contract" shall mean the contract or agreement on software subscription between a Customer and Unify.
  - 1.5 A "Customer" is the contracting party which subscribes certain software products.
  - 1.6 "Freeware" shall mean software that does not require payment or other compensation (such as nags or advertising) for its use. Freeware may be subject to a proprietary license terms with no access to the source code.
  - 1.7 "Handling Fee" shall mean the handling fee for the supply of a Product Instance License Key.
  - 1.8 "Open Source Software" or "OSS" shall mean a computer program that is available in source code form for which the source code and certain other rights normally reserved for copyright holders are provided under a software license that permits users to study, change, and improve the software.
  - 1.9 "Product Instance" shall mean one copy of an installed Base Software product.
  - 1.10 "Product Instance License Key" shall mean a license key required for each copy of a Product Instance.
  - 1.11 "Reporting Period" is a calendar month.
  - 1.12 "Single User Software" shall mean a program for installation on a single computer which is not a server computer such as a desktop personal computer, notebook, etc.
  - 1.13 "Software" includes the entire contents of the files and data media supplied under the Contract. These include, among other things computer information and programs from Unify or third parties in object code. In addition, the term Software includes Updates and Upgrades.
  - 1.14 "Software Product" shall mean the computer programs listed in the Contract and which is licensed to use under the Contract and which, for the avoidance of doubt, may be Base Software and/or Single User Software, as the case may be.
  - 1.15 "Software Service" shall mean access to Updates and Upgrades for the licensed Base Software and the licensed Single User Software and includes the right to upgrade to the latest version of the Subscribed Software, whilst the Contract is in place.
  - 1.16 "Subscription Fee" shall mean the fee for the usage of Subscribed Software set out in the contract. The accounting unit will always be *per User*, irrespective of SSL Usage.
  - 1.17 "Subscriber License" shall mean a package which includes a license of the Base Software under which it is rented to the Customer for the purpose of setting up a Product Instance, one Client Access License or - as the case may be - one Single User Software license, and Software Service. For each Product Instance a separate Product Instance License Key is required.
  - 1.18 "Subscribed Software" shall mean a Software Product for which a Subscriber License is acquired.
  - 1.19 "SSL Usage" shall mean the usage of Subscribed Software and is defined as the resource capacity available for use by end-users within the Reporting Period. It is not actual metered usage.
  - 1.20 "Update" shall mean a computer program with the focus on bug fixing and if necessary, minor, functional supplements (e.g. additional drivers).
  - 1.21 "Upgrade" shall mean a new version / functional expansion, if necessary with bug fixes for old versions, the licensing of which requires a valid license for a defined prior release.
  - 1.22 "User License" see "Client Access License"
  - 1.23 "Use Report" shall mean a report of the peak of supported Clients for each Subscribed Software within the Reporting Period. The Use Report does not report the actual metered usage, but the resource capacity available for use by end-users in the Reporting Period. .
  - 1.24 "Zero Use Report" shall mean a report which confirms that no CAL's have been used by Clients during the Reporting Period.
- ### 2 Customer's usage rights
- 2.1 Unify and/or its suppliers retain all rights and title to the intellectual property of the Software. The Software is protected by copyright acts and international treaties as well as by other acts and agreements on intellectual property. Use of the Software is only permitted within the scope of these contractual provisions.
  - 2.2 Software will be supplied in object code only. The source code will not be provided, save where and to the extent that any Open Source Software license mandates otherwise in respect of it.
  - 2.3 In return for payment of the Handling Fees and Subscription Fees hereunder, Unify grants the Customer a non-perpetual, non-exclusive, terminable, non-transferable, worldwide and

limited right to use the Software as agreed to in the Contract for its own use.

- 2.4 The Customer shall not decompile or disassemble the software, remove any program parts, undertake reverse engineering or otherwise try to derive the source code, except as provided by mandatory law.
- 2.5 The Customer shall not remove alphanumeric identification characters, trademarks and copyright notices. With regard to authorized copying, he shall copy it unaltered, give all the copies a consecutive number from which all the software serial numbers are also to be inferred and record the whereabouts of all copies which Unify may examine on request. Mandatory copyright provisions shall be unaffected.
- 2.6 If data media contain several software products, the Customer shall only use the software products that are licensed to him. The unbundling or repackaging for sale, resale or marketing otherwise is not permitted.
- 2.7 The Customer shall assign the appropriate CALs to each of its Clients.
- 2.8 The Customer shall not lease, lend, sell, sublicense the rights to the Software, transfer, give or assign it to third parties for use, copy the Software or permit copying of the Software either in part or whole, except in the cases expressly permitted here.
- 2.9 The Customer may backup data in accordance with the standards of technology and make the necessary backup copies of the installed Software Products. He may make a backup copy of each licensed Software Product.
- 2.10 If and to the extent that Unify provides activation codes or license codes under the Contract, the Customer shall not disclose these codes to third parties.
- 2.11 Upon delivery and installation of Upgrades, the Customer shall have no further rights with regard to the replaced Software Product. Existing copies shall either be destroyed by the Customer with evidence provided or returned to Unify.
- 2.12 The Software Products may contain third party Software that is available free of charge. No license fee is charged to the Customer for the use of such Software under the Contract. The Customer acknowledges that certain terms and conditions may apply to the use and distribution of Freeware and Open Source Software that may form part of the software product. The Customer will comply with any such terms and conditions.
- 2.13 Single User Software, specifically third party Software or Open Source Software, may be subject to specific license terms of the respective licensor. Such specific license terms will be referred to during the installation routine or in the accompanying documentation. Any installation of the Single User Software is subject to the Customer's acceptance of those specific license terms. In the event that the Customer does not accept the specific license terms, the Customer is not entitled to use the Single User Software.
- 2.14 Unify may rescind this license in writing in its entirety or with regard to a particular Software Product if the Customer breaches material obligations arising from the Contract, and has not remedied this breach within 30 days after receipt of notice of such breach from Unify.

### **3 Product Instance License Key**

- 3.1 A Product Instance License Key is required for each copy of a Software Product installed and can be ordered for the price

of a nominal handling fee.

- 3.2 Product Instance License Keys are version specific, that is, upgrading a Software Product to a new major release (new version) requires a new Product Instance License Key.
- 3.3 All generated Product Instance License Keys will expire on January 31st of the following year (except when the user generates the key after November 30th, in this case the expiration date is shifted to the year after the next year).
- 3.4 The Customer may obtain a refreshed Product Instance License Key for a Product Instance without placing an order or paying another handling fee from Unify's central license server, accessible via Unify's password protected internet platform.

### **4 Use of Internet based Tools and Platforms**

- 4.1 To access password protected internet based tools and platforms of Unify the Customer will receive a separate access key consisting of a user ID and password. In conjunction with his Customer number, the Customer will be able to conduct online transactions. This access key may only be communicated between Unify and the Customer. It must not be disclosed to third parties.
- 4.2 In the interests of the security of business traffic, system access to the password-protected internet based tools and platforms of Unify are only possible for registered users. The Customer shall be represented by his employees and/or third parties for whom the Customer has applied for and/or created system access (referred to hereafter individually or jointly as employees) and must take responsibility for their activities and knowledge. Unify reserves the right to reject the registration of individual users.
- 4.3 The Customer is obliged to supply true information and, if there are any subsequent changes, to notify Unify about these immediately. In particular the Customer shall inform Unify immediately in writing, if necessary in advance by a simple e-mail, as soon as the right of representation of the employees authorized by the Customer for system access expires.
- 4.4 With log-in, or where a log-in is not required, by starting the use of the Unify web sites the Terms of Use for these Unify web sites are accepted in their then current version as posted on such web sites.
- 4.5 If Unify has undertaken to supply Software and/or documents (in connection with an order or service agreement, for example), delivery will have been made in a manner that discharges Unify's obligation if the Customer was able to retrieve it in customary circumstances.
- 4.6 The parties undertake to safeguard their communications equipment against unauthorized third-party access, against unauthorized message transmission or comparable misuse, and against loss of input or output data following message transmission or message retrieval. The relevant state-of-the-art is the applicable gauge for judging the level of care to be exercised by the contractual parties.

### **5 Confidentiality, data protection**

- 5.1 Unify and the Customer shall treat as confidential in respect of third parties all information, business transactions and documents which are known to them in connection with the Contract and which are indicated to them as confidential, unless such information has already become generally known in some other way. This duty remains in place even

after the end of the Contract. Unify and the Customer will impose a corresponding obligation on their employees affected by the Contract.

- 5.2 Where personal data will be stored or otherwise processed, Unify will take note of directions from the Customer and take the necessary technical and organizational action to secure the data against misuse. These obligations remain in force even after the Contract has ended.

## 6 Usage Collection and Use Reports

- 6.1 For the duration of the Contract the Customer allows his system to be connected over a secure broadband connection to Unify's Smart Services Delivery Platform (SSDP) and authorizes Unify to collect the Subscriber License usage information from the respective Product Instances automatically and generate a Use Report.
- 6.2 Every day the Base Product itself counts the maximum number of supported Clients (registered, configured or other method) and records this usage. The highest of those counts per month determines the number of Subscriber Licenses of the respective Base Product for which the Customer will be invoiced for the Reporting Period. .
- 6.3 The Use Report is generated at the latest by the 8<sup>th</sup> of each month for the previous calendar month.
- 6.4 The monthly counts are stored within the Base Product for 12 months. The products allow access to its usage information in case there is a need for a manual audit.
- 6.5 The Customer allows on site access to the respective Product Instances, should the automatic process fail and a manual collection of usage information becomes necessary. In this case Unify will not charge for manual collection of usage information.
- 6.6 If the usage information is collected manually on Customers' request, then the efforts for manual collection will be charged additionally.

## 7 Charges, Royalties and Payment Terms

- 7.1 The Customer shall pay (i) Handling Fees for each ordered Product Instance License Key provided; and (ii) on a monthly basis, a Subscription Fees for SSL Usage, as set out in the Use Report. Unify may adjust the Subscription Fees and Handling Fees by the service of three months notice.
- 7.2 The prices applicable at the time the Subscribed Software was used will be used for invoicing.
- 7.3 Value-added tax at the effective statutory rate and/or other Governmental taxes or fees shall be charged in addition to all prices quoted.
- 7.4 The Customer shall pay and hereby indemnifies Unify against, and agrees to protect, save and keep harmless Unify from any and all taxes (including, without limitation, withholding tax), levies, duties or governmental charges, assessments or withholdings of any nature whatsoever, however imposed, withheld, levied or assessed, together with any and all penalties, fines, other additions to tax and interest thereon imposed by any country, by any governmental or taxing authority, by any territory or possession thereof, or by any international authority or other taxing authority upon or with respect to the transactions under this Agreement.
- 7.5 If any foreign authority makes a claim against Unify for any taxes owed by Customer, the Customer shall pay or reimburse all of Unify's expenses, fees and costs incurred in defending such action by the foreign authority.

- 7.6 Payment shall be made, without deduction, within 30 days from date of invoice.

- 7.7 In the event of late payment, interest in the amount of eight percentage points in addition to the basic rate of interest of the "Deutschen Bundesbank" shall apply in accordance with § 288 of the German Civil Code ("BGB").

- 7.8 The Customer is only justified in offsetting or holding back payments due if Unify has expressly agreed to this in writing or if the counterclaims are undisputed or established with legal force.

- 7.9 In case of direct debits Unify charges outstanding debts on their due date, however, non-ongoing prices at the earliest 5 working days after receipt of the invoice. It is the Customer's responsibility to ensure that the account is sufficiently covered on due date.

## 8 Transfer of Risk

Where Software is provided by means of electronic communication media, e.g. the internet, the transfer of risk takes place when the Software leaves the area of influence of Unify (e.g. the server for download).

## 9 Defects as to Quality

- 9.1 All products or services where a defect as to quality [*Sachmangel*], (hereinafter referred to as Defects) becomes apparent within the limitation period shall, at the discretion of Unify, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defects had already existed at the time when the risk passed.
- 9.2 With Software errors, Unify supplementary performs by giving the Customer a new release of the Software version delivered as soon as this is available at Unify or accessible with reasonable efforts.
- 9.3 Software is free of material deficiencies when, on transfer of risk, if it substantially conforms to the characteristics, finally described in the pertaining Software documentation. Unify receives from the Customer all the documentation and information required for rectifying Software errors. It must be possible to reproduce Software errors.
- 9.4 Claims for supplementary performance, to cancel the Contract or to reduce the remuneration are subject to a limitation period of 12 months, starting at the earliest as allowable by law. This provision shall not apply where longer periods are prescribed by law as well as in cases where Unify fraudulently conceals a Defect or breaches a guarantee for the condition of the goods [*Beschaffheitsgarantie*]. The legal provisions regarding suspension of expiration [*Ablaufhemmung*], suspension [*Hemmung*] and recommencement of limitation periods remain unaffected. Claims according to §§ 377, 381 (2) German Commercial Code (HGB) have to be made in written form without delay.
- 9.5 In the case of notification of a Defect, the Customer may withhold payments to a reasonable extent taking into account the Defect occurred. The Customer, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. The Customer's right to withhold payments shall be time barred upon expiration of the limitation periods applicable to Defects. Unjustified notifications of Defect shall entitle Unify to have its expenses reimbursed by the Customer.
- 9.6 Unify shall be given the opportunity to supplement its

performance [*Nacherfüllung*] within a reasonable period of time.

- 9.7 If the supplementary performance is unsuccessful, the Customer shall be entitled to cancel the Contract or to reduce the remuneration.
- 9.8 There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, and unsuitable equipment or from particular external influences not assumed under the Contract, or from non-reproducible Software errors. The same applies when the Software is not used in accordance with the applicable installation requirements or not in accordance with the appropriate conditions of usage. Claims based on Defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof shall be likewise excluded.
- 9.9 Unify makes no guarantee that the Software functions satisfy the demands of the Customer, that Software products interoperate as selected by the Customer, that these will operate without interruption and without faults or that all Software errors can be rectified.
- 9.10 Claims for Defects cannot be made with regard to the quality and suitability of the objects and materials provided by the Customer. This applies equally to Defects in the work done by Customer-supplied personnel, unless the Customer can prove that the Defect is attributable to incorrect instructions or violation of the duty of supervision by Unify.
- 9.11 The Customer shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel and transport, labor, and material, to the extent that expenses are increased because the subject-matter of the services was subsequently brought to another location than the Customer's branch office, unless doing so complies with the intended use of the Supplies.
- 9.12 Claims for damages and claims for reimbursement of expenses (hereinafter together referred to as claims for damages) based on a Defect are excluded. This shall not apply where Unify fraudulently conceals a Defect, breaches a guarantee for the condition of the goods [*Beschaffheitsgarantie*] or intentionally or grossly negligently fails to fulfill its obligation as well as in cases of injury of life, body or health. Any other claims of the Customer or any such claims exceeding the claims provided in this clause 8, no matter for what legal ground is excluded. The above provision does not imply a change in the burden of proof to the detriment of the Customer.

## **10 Intellectual Property Rights and Copyright; Defects in Title**

- 10.1 Unless otherwise agreed, Unify shall provide the services free from third parties' intellectual property rights and copyrights (hereinafter referred to as "IPR") with respect to the country of the place of destination. If a third party asserts a justified claim against the Customer based on an infringement of an IPR with respect to the Supplies made by Unify and then used in conformity with the Contract, Unify shall be liable to the Customer within the time period stipulated in clause.9.4 as follows:
  - 10.1.1 Unify shall choose whether to acquire, at its own

expense, the right to use the IPR with respect to the Supplies concerned or whether to modify the Supplies such that they no longer infringe the IPR or replace them. If this would be unreasonable to demand from Unify, the Customer may cancel the Contract or reduce the remuneration pursuant to the applicable statutory provisions. In case of rent the Customer right to withdraw from the Contract shall be substituted by the right of premature termination.

- 10.1.2 The above obligations of Unify shall only apply if the Customer (i) immediately notifies Unify of any such claim asserted by the third party in writing, (ii) does not concede the existence of an infringement and (iii) leaves any protective measures and settlement negotiations to the discretion of Unify. If the Customer stops using the Supplies in order to reduce the damage or for other good reason, it shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
- 10.2 Claims of the Customer shall be excluded if it is itself responsible for the infringement of an IPR. .
- 10.3 Claims of the Customer shall also be excluded if the infringement of the IPR is caused by specifications made by the Customer, to a type of use not foreseeable by Unify or being used together with products not provided by Unify.
- 10.4 In addition, with respect to claims by the Customer pursuant to clause. 10.1.1 above, clause 9 Nos. 5 and 6 shall apply accordingly (*mutatis mutandis*) in the event of an infringement of an IPR.
- 10.5 Where other defects in title occur, clause. 9 shall apply accordingly (*mutatis mutandis*).
- 10.6 Customer's claims for damages based on an infringement of an IPR or a defect in title are excluded. This shall not apply where Unify fraudulently conceals a defect, breaches a guarantee for the condition of the goods or intentionally or grossly negligently fails to fulfill its obligation as well as in cases of injury of life, body or health. Any other claims or any such claims exceeding the claims provided in this clause 10 of the Customer, no matter for what legal reason is excluded. The above provision does not imply a change in the burden of proof to the detriment of the Customer.

## **11 Liability on the Part of Unify**

- 11.1 Unify bears unlimited liability for the injury of life, body or health for which it is responsible and makes good a damage to property for which it is to blame, up to an amount of EUR 100.000,- per occurrence.. The compensation obligation does not include the expense of restoring lost data and information.
- 11.2 Any claims for damages based on whatever legal reason, including infringement of duties arising in connection with the Contract or tort shall be excluded.
- 11.3 The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act [*Produkthaftungsgesetz*], in the case of intent, gross negligence, injury of life, body or health, or breach of a guarantee for the conditions of the goods [*Beschaffheitsgarantie*] or of a condition which goes to the root of the Contract [*wesentliche Vertragspflichten*]. However,

claims for damages arising from a breach of a condition which goes to the root of the Contract shall be limited to the foreseeable damage which is intrinsic to the Contract, unless caused by intent or gross negligence

- 11.4 To the extent that the Customer has a valid claim for damages according to this clause, it shall be time-barred upon expiration of the limitation period applicable to defects pursuant to clause 9.4. This shall not apply where Unify intentionally or grossly negligently fails to fulfill its obligation or fraudulently conceals a defect as well as in cases of injury of life, body or health or in the case of claims for damages under the German Product Liability Act.
- 11.5 The above provision does not imply a change in the burden of proof to the detriment of the Customer.

## **12 Legally Ineffective Provisions**

Should individual provisions of these "General Terms and Conditions for Software Subscription for Enterprises" be ineffective in law or unable to be executed for legal reasons, this does not affect the overall validity of the Contract. In such a case the parties to the Contract will make an agreement which replaces the provision involved by a provision which has the equivalent economic effect where possible.

## **13 Export Approvals, Subsidiary Agreements, Transfer of Contractual Rights and Duties, Governing Law, Court of**

### **Jurisdiction**

- 13.1 Unify's obligation to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos [or other sanctions].
- 13.2 With own exports, the Customer shall pay absolute attention to the export (control) rules, relevant for products, of the EU or the EU-Member States as well as the USA.
- 13.3 Subsidiary agreements must be made in writing. This also applies to the waiver of this written form requirement
- 13.4 Unify can transfer the rights and obligations from the Contract to a third party. The transfer will not take effect if the Customer objects to the transfer in writing within 4 weeks of receiving such a notification; Unify will draw attention to this fact in the notification.
- 13.5 The Contract is governed by substantive German law under exclusion of the conflict of laws provisions.
- 13.6 The court of jurisdiction when the customer is a business administrator in the sense of the HGB, shall be Munich, Germany.
- 13.7 If there is any ambiguity, discrepancy, inaccuracy or inconsistency between relevant provisions of these General Terms and Conditions and any provisions of the German text hereto available at Unify, the provisions of such original German document shall prevail.