

# Additional End User Software License Terms (EULA) for Unify Cloud Services

Version 3.0, effective January 2019

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## 1. Definitions

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

1.1 “**Subsidiary**” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with Unify or Customer, respectively; as used herein, “control” means the possession of the power to direct or determine the direction of the management and policies of an entity whether this is achieved through the possession of a majority of the voting rights, by contract or otherwise.

1.2 “**Agreement**” means the separate agreement (e.g. the software license agreement) under which Customer obtained the Software from Unify or a Unify Partner.

1.3 “**Base Software**” means – with respect to single-user Software – the Software installed on a server (“host”), which is accessed by Clients to use the functionality of the Base Software.

1.4 “**Client**” means a clearly identifiable entity that can access a server and one or more Product Instances of the Core Software hosted by it. Clients can be, for example, and, depending on the specific product, users, agents, devices, identities or communication channels. The number and type of Clients authorized to use one or more Product Instances on a specific server is defined in the Agreement.

1.5 “**Client Access License**” or “**CAL**” means a License that allows a specified number of Clients to access and use the Base Software. Depending on the product, the CAL covers at least one (1) Client but may also cover a defined number of Clients (for illustrative purposes and without limitation, 20, 25, 100 Clients) or allow an unlimited number of Clients to access the Basic software.

1.6 “**Customer**” means the party purchasing a copy of the Software, which is neither a Partner nor an Affiliate of Unify.

1.7 “**Documentation**” means the technical and/or functional descriptions provided with the Software. The Documentation can be made available in electronic format or online, e.g. through Internet. The Documentation may also include, among other things, a description of performance characteristics, special features, hardware and software requirements, installation requirements, terms of use and end user manuals. To the extent required by the relevant Freeware provider or OSS Licensor, the Documentation also includes the applicable license terms for the relevant Freeware or OSS Licenses.

1.8 “**Firmware**” means single-user Software incorporated into the microcontroller of an electronic device (e.g. a telephone handset).

1.9 “**Freeware**” means a computer program that you can use without payment or other consideration (for example, through advertising). The Freeware may be subject to proprietary license terms established by the provider of the Freeware which, for example, may limit the right to distribute or redistribute it. Freeware may present functional limitations that are not present in a commercial version. Unlike what happens with Open Source Software, the supplier usually does not deliver the source code together with Freeware.

1.10 “**License**” means the right to use a particular computer program. A license may be granted permanently for the legal term of copyright protection and in exchange for a one-time license payment, or it may be limited in time for the duration of a subscription that requires payment of a periodic fee. Further definition of the exact type and scope of the License purchased by the Customer is contained in the Agreement.

1.11 “**License Terms**” or “**EULA**” (End User License Agreement) means this document.

1.12 “**Open Source License**” or “**OSS License**” means the license conditions for a program which, in addition to the right to use it without any license fee or royalty, grant the user rights of use that are normally reserved to the owner of copyright, e.g. the right to modify the program, to combine it with others, or to distribute the program or a modified version of it, and which require that at least one of the following conditions be met: (a) it must be made available to all, either generally or upon request, the source code or design information for the initial or modified program; (b) you must be granted the right to create derivative works of the initial or modified Program; (c) everyone must be granted, either generally or upon request, a license to use the intellectual property rights included in the Program, free of royalties or license fees, (d) the copyright owner must be identified for the unmodified program (attribution notice). By this definition, OSS Licenses are, for

example, the GNU General Public License (GPL) family of licenses, the Berkeley Software Distribution (BSD) family of licenses, and “public domain” licenses.

1.13 “**Open Source Software**” or “**OSS**” means a program licensed under an OSS License (a) that is available only in source code form, or (b) in which the source code is delivered with the object code (executable) or (c) where you can obtain the source code for free (handling fees/shipping costs may apply).

1.14 “**Product Instance**” means an installed copy of the Base Software.

1.15 “**Product Instance License Code**” or “**License Code**” means the license code that establishes the maximum number of CALs assigned to a given Product Instance.

1.16 “**Single-user Software**” is Software intended to be used by a single user on a single device, which is not intended to be used as a server, such as a desktop, notebook, smartphone, etc.

1.17 “**Software**” means, together, the program, files and media (if any) provided to you under this EULA, and including, if so provided, all Updates, Upgrades, fixes, modified versions, supplements and copies of the Software. The Software may be a program from Unify or a third-party vendor and is generally provided only in executable (object code) form. For purposes of this EULA, the relevant Documentation is deemed to be an integral part of the Software. Open Source Software or Freeware delivered together with the Software are, in principle, included in this definition of “Software” but, for them, the respective Open Source Licenses or license terms imposed by the provider of the Freeware prevail over this EULA.

1.18 “**Update**” means a release of the Software that mainly deals with bug fixes and, only if necessary, contains minor functional improvements (e.g. additional drivers). At its sole discretion, Unify may choose to publish an Update as a full release that provides a full installation, or as a partial release that implements only modified code (e.g., a service pack). However, an Upgrade requires an installation of existing, properly licensed Software. Typically, an Update is indicated by increasing the minor release number within the version with the largest number (e.g. “Version 1.2” instead of “Version 1.1”).

1.19 “**Upgrade**” means a release of the Software that adds new and/or expanded functionality and, if necessary, contains bug fixes from previous versions. Generally speaking, an Upgrade is a complete release that involves a total installation. However, an Upgrade requires a prior, eligible, existing and properly licensed (set of) versions of the Software to be upgraded. Typically, an Update is indicated by increasing the major version number (e.g. “Version 2.0” instead of “Version 1.2”).

1.20 “**Unify**” means the Unify entity designated in the Agreement.

1.21 “**Unify Partners**” means distributors, resellers, VARs, OEMs and other channel partners that Unify has authorized to market its products and services.

## **2. General conditions of the License**

2.1 The Customer is granted a License to use the Software on the basis of these EULAs and only under the Agreement on the terms contained therein.

2.2 The Software is protected by copyright laws and international copyright treaties as well as other laws and conventions dealing with intellectual property. As between Customer, the intellectual property rights in the Software remain solely with Unify or, as applicable, Unify's suppliers, OSS licensors or Freeware suppliers.

2.3 Customer will only install and use the Software if it accepts all license terms, including the OSS Licenses and the license terms of the Freeware Providers. In case of non-acceptance of these conditions, the Customer may not install or use the Software in question. In this case and unless otherwise indicated in the Contract, the Customer may, to the exclusion of any other claims, withdraw from the Contract in relation to the Software. The Software and Documentation must then be returned to Unify or the Unify Partner from which Customer obtained them. The Customer may withdraw only in relation to the Software. In cases where returning the Software is technically impossible, e.g. in the case of downloaded Software, Customer must convincingly and in writing confirm that the Software has not been installed and will not be used.

2.4 Without limiting any of Unify's obligations under the OSS Licenses, and unless expressly stated otherwise, the Software will be delivered and licensed in object code form, which is an executable, machine-readable form. Customer is not entitled to delivery of the source code for the object code in question.

2.5 Unless otherwise expressly provided in the Agreement, the Customer will have a non-exclusive right to use the Software, without prejudice to the provisions of Article 3, to manage the internal business purposes of the Customer and those of its Affiliates. The use or operation of the Software by third parties is permitted if performed exclusively under the control of the Customer and for the latter's internal business purposes (e.g. hosting, outsourcing). Within this scope, the Customer is also permitted, to a reasonable extent, to reproduce

or copy the Software; while, all other rights remain with Unify, especially the right to distribute, translate, modify, rearrange or publicly broadcast the Software.

Except for Open Source Software, Customer may not decompile or disassemble the Software, extract parts of it, reverse engineer or otherwise attempt to obtain the source code. The right of the Customer to reverse engineer or decompile the Software according to statutory law / mandatory legal provision, in particular if it is necessary to achieve the contractually established functionality or interoperability of the Software with other programs, is not affected thereby.

Before doing so, Customer must provide Unify with written notice requesting that Unify provide the information and documents necessary to achieve contractually established functionality or interoperability with other programs within a reasonable period of time. Only after the fruitless expiration of this period does the Customer have the right to reverse engineer or decompile the Software within the limits permitted by legal provisions.

2.6 Neither the Software itself nor the right to use it may, without the prior written consent of Unify, be rented, leased or loaned, sub-licensed or, without prejudice to the provisions of Article 2.8, be assigned or returned otherwise available to third parties. The Software may not be duplicated or copied, in whole or in part, unless expressly permitted in accordance with the Agreement or where the making of backup copies is permitted by law. At its sole discretion, Unify will be free to grant its consent.

2.7 In the event that the media supplied to the Customer contain the Software for different products, the Customer may only use the Software for which he has purchased the rights of use. You may not disassemble or reassemble the Software for sale or resale, or to modify such media or to make any copy thereof.

2.8 If the Software has been provided to the Customer under a Perpetual License, for the resale of the Software and the assignment of its right of use it is necessary that the Customer transfers the Software and the rights of use exactly in the manner and according to the configuration in who purchased them. The Software may only be transferred to a third party in its entirety and with all associated materials and CALs. No temporary relocation is permitted. The transfer of parts of the Software to a third party or the transfer of copies of the same Software to multiple third parties is prohibited.

2.9 For any permitted resale of the Software, Customer will warrant and, upon request by Unify, provide evidence in writing, that

- the third party has agreed to accept and fully comply with this EULA;
- the Software, all serial numbers, CALs and all materials provided with the Software, including pre-installed materials, and all copies, Updates and Upgrades and prior versions of the Software in Customer's possession are been transferred to the third party;
- the Customer has not retained any copies, including backups;
- Unify has been notified of the assignment, the identity of the assignee and the assigned Software, including serial numbers and
- related license codes, directly or through the Unify Partner e
- The reassignment of serial numbers and license keys to the third party who purchased the Software was arranged with Unify.

2.10 Upon transfer of the Software to a third party, all of the Customer's rights to use the Software will expire. Any such transfer does not automatically include a transfer or assignment of warranty claims or any support or maintenance agreements that may exist between Customer and Unify. If Customer purchased the Software from a Unify Partner, different or individual agreements may apply to Customer's warranty claims or in connection with any support or maintenance agreements entered into with the Unify Partner.

2.11 The Customer may create an appropriate number of backup copies of the Software. Customer will not delete any alphanumeric identifiers, trademark notices and copyright notices that may appear in the Software or on the media and will copy the Software without making any modifications. Customer will record the whereabouts of all copies for Unify to review upon request.

2.12 If activation of the Software is required, e.g. using a Product Instance License Key, Customer will activate the Software within thirty (30) days of installation. Only then will the installation be technically complete. The necessary information must be entered by the Customer according to the methods described in the Software installation sequence. If changes have been made to the hardware, it may be necessary to reactivate the Software. In case of failure to activate within the indicated period, the Software may be disabled for

subsequent use. To activate the Software again, a valid activation code is required which can be requested from Unify or the Unify Partner by providing proof of authorization to do so. The individual acceptance agreements set out in the Agreement will remain unchanged.

2.13 Any additional program code (e.g. patches, Updates) that is made available to the Customer under warranty or as part of the software maintenance contract or other support contract, and all extensions to the License, e.g. additional CALs will be deemed an integral part of the relevant Software and will be subject to these License Terms, unless otherwise agreed in each case.

2.14 Upon installation of an Upgrade or Migration version of the Software, the right of use for the previous version will expire. Existing copies, including backup copies, may be destroyed, with evidence provided to Customer if requested, or returned to Unify or the Unify Partner, unless Customer demonstrates that the previous version is necessary to satisfy the requirements established by law regarding the conservation of documents and documentation that the Upgrade or migration version of the Software does not allow to satisfy. In any case, when the software is transferred to a third party, this option to keep this version expires permanently.

2.15 Unify may terminate the License and usage rights granted to Customer under this Agreement, in whole or in part, for cause if Customer is responsible for a significant breach of the License Terms, in particular within the scope of the License and thereby infringing Unify's rights in the Software so as to make it unreasonable for Unify to enforce the grant of rights under this Agreement, provided that Customer does not cure the infringement within thirty (30) days from receipt of the relevant communication sent by Unify. This will in no way affect Unify's right to seek legal recourse for such violations, in particular to seek injunctive relief.

2.16 The provisions contained in these License Conditions also apply to the Firmware, but the Firmware can only be used or transferred to third parties together with the relevant hardware accompanying it for which it was released.

### **3. Open Source Software, Freeware and Third Party Software Components**

3.1 Some parts of the Software, including third party software components, Freeware or OSS may be subject in whole or in part to the license terms of the relevant supplier, or to OSS Licenses. Before entering into the Agreement, the Customer may obtain from Unify or the Unify Partner a copy of the license terms.

These license terms will prevail over this EULA and will be displayed during the installation process or included in the Documentation.

3.2 Some OSS or Freeware licenses may provide additional limitations or exclusions of warranties and liabilities. Unify must notify Customer of any such limitations or exclusions, whether or not they operate under the law applicable to the Agreement. Unify advises the Customer to be aware of the limitations or exclusions contained in such OSS or Freeware licenses and, if in doubt, to consult a professional for legal advice in this regard.

3.3 To the extent that the OSS Licenses provide for the provision of source code, Unify may (a) make it available by including it in the delivery of the Software, i.e. on the medium, on a separate medium, by download or on the device, or (b) making it available on the Unify website and, in any case, (c) sending it on a medium, at the Customer's request, in exchange for reimbursement of handling/shipping costs. Unify will ensure that (b) and (c) for a particular version of the Software are available for at least three (3) years, calculated from the date on which the sale of the version in question ends as per the product life cycle policy of Unify.

3.4 OSS and Freeware are licensed without royalties, i.e. there is no cost for providing the OSS and Freeware and for exercising the rights covered by the licence. Reimbursement may be required for costs incurred by Unify in providing the OSS source code on media.

### **4. Customer Usage Rights**

4.1 Base Software License: With a Base Software License the Customer is entitled to a single installation on one server. Depending on the relevant Software, a CAL must be purchased for each Client that accesses the product Instances.

4.2 Single-user Software License: With a single-user Software License, Customer is entitled to a single installation of the Software on a single computer. Additionally, Customer may install one copy of the Software on a server on its internal network, solely for the purpose of downloading and installing the Software on other individual computers connected to its internal network, and provided that this installation routine is permitted by the single-user Software. Depending on the Agreement, the number of single-user Software Licenses

purchased by Customer may also establish the maximum number of installations permitted. Any other use of the Software as a single user over a network is prohibited.

## **5. Delivery**

5.1 Unless otherwise agreed in the Agreement, delivery of the Software will be carried out, as chosen, in their sole discretion, by Unify or the relevant Unify Partner, by sending the Software on media or by pre-installing it on a device (for example e.g. server) to the agreed delivery address (physical delivery), or by making the Software available for download by the Customer via an online portal or app store (electronic delivery).

5.2 In order to determine compliance with the delivery dates and for the transfer of risk, in the case of physical delivery the date and time in which Unify transfers the medium or device to the shipper are decisive while, for electronic delivery, the date on which the Software was made available for download is valid, communicating this to the Customer.

5.3 Certain Unify products may be made available under a Software-as-a-Service (SaaS) delivery and licensing model with the product centrally hosted and provided to Customer on a subscription basis. These products do not include any physical delivery. No usage rights are granted beyond the right to use the applicable SaaS product.

## **6. Unify Warranty and Responsibility**

6.1 Only the Documentation is decisive for the necessary quality and functionality of the Software. Unify is not responsible for any other condition of the Software. In particular, Unify does not represent or warrant (a) that the Software will function in combination with a selection or configuration that has not been solely and freely determined by Unify, (b) that it will run without errors or interruptions, or (c) that it is possible to eliminate all errors in the Software. A technical error in the Software will be considered a Defect only if it causes the software not to conform to the necessary quality and functionality as established by the Documentation.

6.2 Warranty claims and other claims and/or requests for reimbursement of expenses against Unify will only be available to the Customer if they have been agreed in an Agreement that has been entered into directly between Unify and the Customer. If Customer purchased the Software through a Unify Partner, Customer's requirements are set forth in the Unify Partner Agreement. This does not limit Customer's claims under applicable product liability law.

## **7. Compliance with Export Control and Customs Regulations**

7.1 All products, including but not limited to items/goods ("Items") (goods/hardware, software and technology and/or services) may be subject to export laws and regulations and/or domestic, foreign and international regulations. The Parties acknowledge that violations of such laws and regulations are prohibited and that compliance with applicable rules and regulations, in particular but not limited to export laws, rules, restrictions or regulations of the Federal Republic of Germany, the European Union or the United States of America, must be guaranteed at all times.

7.2 Unify will carry out all necessary and appropriate procedures to apply for the export authorizations required for deliveries to the CUSTOMER, provided that Unify is the legal exporter of record for the deliveries. CUSTOMER will provide assistance, required documentation and certificates required by Unify to obtain required permits or to review, ensure and document compliance with applicable laws and regulations.

7.3 In case of failure to grant the requested authorizations, granted with delay, granted for a reduced purpose, revoked or not renewed, Unify will not be liable to the Customer. Such events must be considered as a force majeure event.

7.4 Customer must obtain in due course all necessary import codes required for items imported by Unify. Unify will, upon request, provide reasonable assistance and documentation to support the import licensing process. Customer understands that Items supplied under Export License are supplied for a specific User and End User and may be subject to specific terms and conditions. Customer will comply with the contents of applicable government licenses and authorizations and certificates signed in the licensing process (for example, End User Certificates-EUC). Customer will not sell, transfer or render otherwise available items delivered under Export License to any End User, end use or destination that deviates from the contents of the Export License unless such action has been authorized by the competent authority issuing the original export authorization.

7.5 Customer will only transfer, export or re-export items received from Unify to reliable partners. Customer will ensure that the Items are not made available in any way to parties, destinations and End Uses embargoed, barred from commercial activities or otherwise under relevant sanctions by Germany, the European Union, the United States or the United Nations.



7.6 Customer will not re-export any technical information/technology controlled under this Agreement.

7.7 If the items are exported directly to a country outside the EU under the Customer's responsibility, the Customer guarantees direct export from the EU or the country of dispatch without undue delay no later than thirty (30) days from delivery of the items to the Customer or its designated freight forwarder and during the period of validity of the export authorization applicable to the individual export. The customer designates only reliable forwarders (for example: AEO certified) who participate in AES (Automated Export System – an automated process for the European Union). The customer guarantees the correct closure of the respective customs procedure upon exit from the European Union or from the shipping country. In the event of non-compliance, Customer will be responsible for any additional costs – freight and otherwise – and charges imposed on Unify by the national tax administration.

7.8 Shipments cannot be diverted to destinations other than those indicated in the shipping documentation. This documentation cannot be removed or replaced before the shipment has reached its originally declared destination.

7.9 In the event of re-export of Items by Customer and unless Unify is the legally defined Record Exporter, Customer will be responsible for the overall export process. Customer shall bear all export control related costs for such re-export.

7.10 For the avoidance of doubt and subject to the terms and conditions of this Agreement, Customer transfers Items delivered by Unify or works and services (including all types of technical support) performed by Unify to third parties worldwide, CUSTOMER is the only one to comply with all applicable national, community and international regulations regarding import, export and re-export, if any.

7.11 Customer shall indemnify and hold Unify harmless from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any failure to comply with export control regulations by Customer, and Customer shall compensate Unify for all resulting losses and expenses.

7.12 The Customer warrants that the Items shall not be used for the design, development or production of any nuclear, military, ballistic, biological or chemical weapon. The customer undertakes to immediately inform Unify in the event of a violation of the aforementioned regulations and/or an investigation conducted by competent national authorities.

7.13 If due to circumstances attributable to the Customer, Unify is questioned by judicial or administrative authorities, the Customer will be held responsible and may be required to compensate Unify for damages caused.

7.14 Unify cannot be held responsible for any regulatory developments, including, but not limited to, revoked authorizations.

7.15 The Customer shall fulfill the obligations set out in this Clause 7 to the Customer Affiliates at all levels by integrating all the requirements set out in this clause, in all agreements signed with end Customers.

## **8. Evaluation License Conditions**

8.1 The terms of this Section apply if Customer has obtained the Software for evaluation purposes and prevail over the remainder of the EULA. For evaluation purposes, the software will only be provided on a temporary basis.

8.2 The Customer may use the Software solely for testing and evaluation purposes, and only for the evaluation period agreed with Unify or the Unify Partner from which the copy of the Software was obtained. At any time, Customer may terminate the evaluation period prior to its expiration by destroying all copies of the Software or returning them to Unify or the Unify Partner.

8.3 Any rights to use the Software will automatically expire (a) if Customer fails to comply with the terms of this EULA and (b) upon expiration of the evaluation period. Customer acknowledges that some products are provided with time-limited license codes that will automatically disable upon expiration of the evaluation period.

8.4 Unless otherwise agreed, during the evaluation period, the Customer is not entitled to receive any form of assistance from Unify or the Unify Partner.

8.5 At any time during the evaluation period, the Customer can upgrade to the normal version; the details of which will be defined with Unify or the Unify Partner.

8.6 Evaluation copies of the Software obtained from Unify are provided "as is" and without any warranty. During the evaluation phase, the Customer uses the Software at its own risk, expense and responsibility. Unify and its suppliers make no warranty as to the performance or results of the use of the Software or any accompanying

materials. Neither Unify nor its suppliers make any warranty that the proprietary rights of third parties are not infringed, or that the Software is merchantable or fit for any particular purpose. This does not limit Customers' rights established by law in the event of fraud or willful misconduct.

8.7 Any claims by the Customer for damages or compensation are excluded, regardless of their legal basis and, in particular, resulting from interruption of production, loss of profit, loss of information and data and consequential damages.

#### **9. General conditions**

9.1 If individual conditions of this EULA prove to be ineffective or unenforceable from a legal point of view, the validity of the other license conditions will remain unaffected. The parties will agree to replace the ineffective or unenforceable condition with a condition that is as close in economic terms to the one replaced.

9.2 These License Terms are governed by the substantive law of the country/state governing the agreement and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9.3 The competent court is that determined in the agreement, except in cases where the applicable law strictly establishes the jurisdiction of another court.

#### **10. Consent to be bound**

Customer agrees to be bound by the terms of this EULA and acknowledges that Customer is forming a legally binding contract by one or more of the following methods: a) by executing this EULA, b) by clicking to accept or agree where this option is made available to the customer or c) actually using the software. Customer must print or save a copy of this EULA for Customer's records. If Customer does not agree to any part of this EULA, Customer is not authorized to access or use the Software.