

Additional license terms for the use of software by end users (EULA) for Circuit

Version 1.1a, as of 18 November 2015

1. Definitions

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

- 1.1 **"Affiliate"** means companies affiliated with Unify or Customer as per sec. 15 et seq. of the German Stock Corporation Act (*Aktiengesetz*, AktG). In the event the AktG does not apply, "Affiliate" shall mean any entity which directly or indirectly controls, is controlled by or is under common control with Unify or Customer, respectively; „control" as used herein shall mean the possession of the power to direct, or cause the direction of, the management and the policies of an entity, whether through ownership of a majority of the voting rights or by contract or otherwise.
- 1.2 **"Agreement"** means the separate agreement (e.g. software license agreement), under which the Customer obtained the Software from Unify or a Unify Partner.
- 1.3 **"Base Software"** means - as opposed to Single User Software - Software installed on a server computer, the so-called "host", which is accessed by Clients in order to make use of the functionalities of the Base Software.
- 1.4 **"Client"** means a clearly identifiable entity which can access a server computer and one or more of the Product Instance(s). 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 the Product Instance(s) on a particular server computer is defined in the Agreement.
- 1.5 **"Client Access License" or "CAL"** means a License that allows a specific number of Client(s) to access and use the Base Software. Depending on the product, a CAL covers at least one (1) Client but may also cover a defined number of Clients (by example and without limitation, 20, 25, 100 Clients) or permit an unlimited number of Clients to access the Base Software.
- 1.6 **"Customer"** means the party acquiring a copy of the Software, who is neither a Unify Partner nor an Affiliate of Unify.
- 1.7 **"Documentation"** means the technical and/or functional descriptions provided along with the Software. Documentation may be provided in electronic form or online, e.g. via the Internet. Documentation may also include, by example and without limitation, a description of performance characteristics, special features, hardware and software requirements, installation requirements, conditions of use and end user manuals. To the extent required by the respective Freeware vendor or OSS Licensor, the Documentation also comprises of the applicable license terms for Freeware and the relevant OSS Licenses.
- 1.8 **"Firmware"** means Single User Software which is embedded into the microcontroller of an electronic device (e.g. a telephone-handset).
- 1.9 **"Freeware"** means a computer program which may be used without payment or other compensation (for example, by advertising). Freeware may be subject to proprietary license terms imposed by the Freeware vendor, which, by example and without limitation, may limit the right to distribute or redistribute the Freeware. Freeware may have functional limitations which a commercial version does not have. Other than with Open Source Software, the vendor of the Freeware vendor usually does not deliver source code with the Freeware.
- 1.10 **"License"** means the right to use a particular computer program. A license may be permanent and will usually be granted for a one-time license fee, or it may be time-limited for the term of a subscription arrangement, usually for a recurring license fee. The exact kind and scope of the License acquired by the Customer is further defined in the Agreement.
- 1.11 **"License Terms" or "EULA"** means this document.
- 1.12 **"Open Source License" or "OSS License"** means license terms for a computer program that, beyond the right to use the computer program without license-fee or royalty, grant the user rights that are usually reserved for the owner of the copyright, e.g. the right to modify the computer program, to merge it with other computer programs or to distribute it, or a modified version thereof, and which require that at least one of the following conditions is met: (a) the source code or design information for the original or modified computer program must be made available to anyone in general, or upon request; (b) the right to create derivative works of the original or modified computer program must be granted; (c) a license to use the intellectual property rights embodied in the computer program must be granted, without a license fee or royalty, to anyone in general, or upon request, (d) the owner of the copyright in the unmodified computer program must be identified (attribution notice). OSS Licenses by this definition are, by example and without limitation, the GNU General Public License (GPL) family of licenses, the Berkeley Software Distribution (BSD) family of licenses, and the "public domain" licenses.

- 1.13 “Open Source Software” or “OSS” means a computer program licensed under an OSS License which is available either (a) in source code form only, or (b) where the source code is delivered together with the object code (executable) or (c) where the source code can be obtained for free (handling fee/ shipping costs may apply).
- 1.14 “Product Instance” means one installed copy of the Base Software.
- 1.15 “Product Instance License Key” or “License Key” means the license key defining the maximum number of CALs assigned to a specific Product Instance.
- 1.16 “Single User Software” is Software intended for use by a single user on a single device, which is not to be used as a server, such as a desktop PC, notebook, smart phone, etc.
- 1.17 “Software” means, collectively, the computer program, files and the media (if any) provided to the Customer under the Agreement resp. this EULA, and including, if so provided, all Updates, Upgrades, corrections, modified versions, supplements and copies of the Software. The Software may be a computer programs from Unify or from a third party suppliers, and is, in general, provided in executable (object code) form only. For the purpose of this EULA, the corresponding Documentation is deemed 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 vendor of the Freeware take precedence over this EULA.
- 1.18 “Update” means a release of the Software which primarily addresses bug fixes and, only if necessary, contains minor functional improvements (e.g. additional drivers). Unify may elect at its sole discretion to publish an Update as a full release which allows for a complete installation, or a partial release which implements only the changed code (e.g. a service pack). In any case, an Upgrade requires an existing and properly licensed installation of the Software. Typically, an Update is identified by an increase in the minor release number, within the major version number (e.g. “Version 1.2” instead of “Version 1.1”).
- 1.19 “Upgrade” means a release of the Software which adds new and/or extended functionality and, if necessary, contains bug fixes for older versions. In general, an Upgrade is a full release which allows for a complete installation. In any case, an Upgrade requires an existing and properly licensed, (set of,) eligible, older version(s) of the Software that is to be upgraded. Typically, an Upgrade is identified by an increase in the major version number (e.g. “Version 2.0” instead of “Version 1.2”).
- 1.20 “Unify” means, unless explicitly indicated otherwise in the Agreement, Unify GmbH & Co. KG, Germany.
- 1.21 “Unify Partner” means distributors, resellers, VARs, OEMs and other channel partners authorized by Unify to market the products and services of Unify.

2. General License Terms

- 2.1 The Customer is granted a License to use the Software on the basis of these EULA and only within the scope and terms of the Agreement.
- 2.2 The Software is protected by copyright laws and international copyright treaties as well as other laws and conventions related to intellectual property. In relation to the Customer, the intellectual property rights to the Software remain exclusively with Unify or, where applicable, with Unify’s suppliers, the licensors of the OSS or the vendors of the Freeware.
- 2.3 The Customer shall only install and use the Software if the Customer accepts all licensing terms, including the OSS Licenses and the license terms of the vendors of the Freeware. If the Customer elects to not accept these, the Customer may not install or use the relevant Software. In this case and unless otherwise provided for in the Agreement, the Customer may, to the exclusion of any other claims, withdraw from the Agreement in respect of the Software. The Software and Documentation must then be returned to Unify or the Unify Partner from whom the Customer obtained it. The Customer may only withdraw with respect to the Software. Where it is technically impossible to return the Software, e.g. in case of downloaded Software, the Customer must credibly and in writing (paper) confirm that the Software was not installed and will not be used.
- 2.4 Without limitation to any obligation of Unify under the OSS Licenses, and unless explicitly agreed otherwise, Software shall only be delivered and licensed in object code form i.e. executable, machine-readable form. Customer has no claim to the delivery of source code to such object code.
- 2.5 Unless explicitly otherwise provided for in the Agreement, the Customer shall have a non-exclusive right to use the Software, subject to the provisions of Section 3, to handle Customer’s own internal business purposes and those of Customer’s Affiliates. The use or operation of the Software by third parties is permitted if done solely under the control of the Customer and for Customer’s own internal business purposes (e.g. hosting, outsourcing). Within this scope, the Customer may also, to a reasonable extent, reproduce or copy the Software. All other rights, in particular the right to distribute, translate, modify, re-arrange or publicly broadcast the Software, remain with Unify.
- With the exception of OSS, the Customer may not decompile or disassemble the Software, extract any parts of the Software, carry out reverse engineering or otherwise attempt to derive the source code of the Software. The Customer’s right to reverse engineer or decompile the Software according to statutory law such as per sec. 69d para 3 and sec. 69e of the German Copyright Act (*Urheberrechtsgesetz*), in particular if it is required in order to achieve the contractually agreed functionality or interoperability of the Software with other computer programs, remain unaffected thereby.

Prior to any such action, the Customer must provide writ-

ten notice to Unify, requiring that Unify provides the necessary information and documents to achieve the contractually agreed functionality or interoperability with other computer programs within a reasonable period of time. Only after the fruitless expiry of that period is the Customer entitled to reverse engineer or decompile the Software within the scope permitted by statutory law.

- 2.6 Neither the Software itself nor the right to use the Software may, without the prior written consent of Unify, be rented-out or leased-out, borrowed-out, sub-licensed or, subject to the provisions of Section 2.8, be assigned or otherwise be made available to third parties. The Software may not be duplicated or copied, either in part or in whole, unless expressly permitted under the Agreement or if statutory law allows for backup copies. Unify shall be free to give its consent at its sole discretion.
- 2.7 If the media provided to the Customer contains Software for different products, the Customer may only use the Software for which the customer acquired use rights. Unbundling or repackaging of the Software for sale or resale or the modification of such media is not permitted.
- 2.8 If the Software was provided to the Customer under a perpetual License, any resale of the Software and the transfer of the right to use the Software require that the Customer transfers the Software and the use rights exactly in the manner and configuration as they were acquired by the Customer. The Software may only be transferred to a third party in its entirety, and complete with all associated material and CALs. A temporary transfer is not permitted. The assignment of parts of the Software to a third party or a transfer of copies of the same Software to multiple third parties is prohibited, unless explicitly permitted by law.
- 2.9 For each transfer of the Software, the Customer shall ensure, and upon Unify's request provide evidence in writing, that
- the third party agreed to accept and fully comply with this EULA;
 - the Software, all serial number(s), CALs and all other material supplied along with the Software, including pre-installed material, and all copies, Updates, Upgrades and prior versions of the Software in Customer's possession were transferred to the third party;
 - Customer retained no copies, including backups;
 - Unify was informed about the transfer, the identity of the transferee and the transferred Software, including the relevant serial numbers and license keys, directly or through the relevant Unify Partner and
 - The re-assignment of the serial numbers and license keys to the third party acquiring the Software was arranged with Unify.
- 2.10 Upon the transfer of the Software to the third party, all rights of the Customer to use the Software shall expire. Any such transfer does not automatically include a transfer or assignment of warranty claims or of any maintenance or service agreements that may be in effect between the Customer and Unify. If Customer acquired the

Software from a Unify Partner, individual or different arrangements may apply for Customer's warranty claims or with regard to any maintenance or service agreements concluded with the Unify Partner.

- 2.11 The Customer may create a reasonable number of backup copies of the Software. The Customer shall not remove any alphanumeric identification characters, trademarks and copyright notices which may be present in the Software or on the media, and will copy the Software unaltered. The Customer shall record the whereabouts of all copies, which Unify may examine on request.
- 2.12 Provided that the Software requires activation, e.g. by applying a Product Instance License Key, the Customer shall activate the Software within thirty (30) days of the day of installation. Only then will the installation be technically complete. The necessary information for this must be entered by the Customer in the manner described in the installation sequence of the Software. If changes have been made to the hardware, it may be necessary to reactivate the Software. In the event the activation does not take place within said period, the Software may become disabled for further use. To activate the Software again, a valid activation code is required, which can be requested from Unify or a Unify Partner upon proof of authorization. Individual arrangements on acceptance made in the Agreement shall be unaffected hereby.
- 2.13 Every supplementary program code (e.g. patch, Update) which is made available to the Customer under warranty or as part of a software maintenance contract or other service agreement, and all extensions of the License, e.g. additional CALs, shall be deemed an integral part of the respective Software and be subject to these License Terms, unless otherwise agreed in the individual case.
- 2.14 Upon the installation of an Upgrade- or migration-version of the Software, the right to use the preceding version shall expire. Existing copies, including backup copies, shall either be destroyed, which is to be evidenced by Customer upon request, or be returned to Unify or the relevant Unify Partner, unless the Customer proves that the preceding version is required to meet statutory document retention and documentation requirements, which cannot be fulfilled with the Upgrade- or migration-version of the Software. In any case, this option to retain such a version finally expires once the software is transferred to a third party.
- 2.15 Unify may terminate the License and the use rights granted to Customer hereunder in writing, in whole or in part, for good cause if the Customer breaches the License Terms to a considerable extent, in particular with regard to the scope of the License, and thereby infringes Unify's rights to the Software in a manner that would render it unreasonable for Unify to adhere to the grant of rights hereunder, provided the Customer fails to cure the breach within thirty (30) days following receipt of a respective notice by Unify. The right of Unify to take judicial action against infringements, in particular to seek injunctive relief, shall remain unaffected.

2.16 For Firmware the provisions of these License Terms shall apply analogously, but Firmware may only be used or be passed on to third parties along with the respective accompanying hardware 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 fully or in part subject to licensing terms of the respective vendor, or to OSS Licenses. The Customer may obtain a copy of the licensing terms from Unify or the relevant Unify Partner prior to entering into the Agreement.

Such licensing terms shall take precedence over this EULA. The licensing terms will be shown during the installation process or they are included in the Documentation.

3.2 Some of the OSS licenses or Freeware licenses may contain additional limitations or exclusions of warranties and liabilities, and Unify is obliged to forward these limitations or exclusions to the Customer, whether or not they are effective under the law applicable to the Agreement. Unify recommends that the Customer makes itself familiar with those limitations and exclusions contained therein, and in case of doubt should seek independent legal advice.

3.3 Insofar as the OSS Licenses provide for the provision of source code, Unify may make it available either (a) by including it in the Software delivery i.e. either on the media, separate media, download or on the device, or (b) make it available on Unify's website and in any case (c) send it on media upon the Customer's request, in return for reimbursement of handling/shipping cost. Unify shall provide that (b) and (c) for a particular version of the Software are available for at least three (3) years, calculated from the end-of-sale date set for the relevant version as per Unify's product lifecycle policy.

3.4 Any OSS and Freeware are licensed royalty-free i.e., no fees are charged for the provision of the OSS and the Freeware and for exercising the licensed rights. Fees may be charged for reimbursement of costs incurred by Unify for providing the source code of OSS on media.

4. Customer's usage rights

4.1 License for Base Software: A License for a Base Software entitles the Customer to a single installation on a server computer. Depending on the respective Software, a CAL must be acquired for each Client that accesses the Product Instance(s).

4.2 License for Single User Software: A License for a Single User Software entitles the Customer to a single installation of the Software on a single computer. In addition, the Customer may install a copy of the Software on a server computer within Customer's internal network, solely for the purpose of downloading and installing the Software onto other single computers attached to Customer's internal network and provided that the Single User Soft-

ware allows such an installation routine. Depending on the Agreement, the number of Licenses for Single User Software acquired by the Customer may also determine the maximum permissible number of installations. Any other use of Single User Software in a network is not allowed.

5. Delivery

5.1 Unless agreed otherwise in the Agreement, the delivery of the Software will be made, as chosen by Unify or the relevant Unify partner at their sole discretion, either by sending the Software on media or pre-installed on a device (e.g. server computer) to the agreed delivery address (physical delivery), or by making the Software available for download by the customer through an online portal or app store (electronic delivery).

5.2 With respect to the meeting of delivery dates and for the passing of risk, in case of physical delivery the date and time of transfer of the media or device by Unify to the freight agent is determinative, and for electronic delivery, it is the date on which the Software was made available for download and the Customer was informed about this.

5.3 Some of Unify's products may be made available under a Software-as-a-Service (SaaS) licensing and delivery model with the product being centrally hosted and provided to the Customer on a subscription basis. These products will not be delivered physically. No rights of use are granted beyond the right to use that SaaS product.

6. Warranty and Liability of Unify

6.1 The Documentation alone is decisive for the required quality and functionality of the Software. Unify is not liable for any other condition of the Software. In particular, Unify does not represent or warrant that (a) the Software works together in a selection or configuration that was not solely and freely determined by Unify, (b) that it will run uninterrupted or error free, or (c) that all Software errors can be eliminated. A technical error in the Software shall only be considered a defect if it causes the software to not be compliant with the required quality and functionality as determined by the Documentation.

6.2 Warranty claims and other liability claims and / or claims for the refund of expenses against Unify will only be available to the Customer if they have been agreed to in an Agreement that was directly concluded between Unify and the Customer. If the Customer acquired the Software through a Unify Partner, the claims of the Customer are determined by the Agreement concluded with the Unify Partner. This does not limit Customer's claims under applicable product liability laws.

7. Export Control

7.1 Unify's obligations under these License Terms are subject to the proviso that their fulfilment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions.

7.2 The Customer shall comply with all national and international export/re-export control restrictions applicable to the Software and/or Documentation. In particular, the Customer shall not, directly or indirectly, export, re-export, or transship the Software or the Documentation in violation of any export laws, rules, restrictions or regulations of the Federal Republic of Germany, the European Union or the United States of America.

8. Evaluation License Terms

8.1 The terms of this Section apply in the event the Customer obtained the Software for evaluation purposes, and take precedence over the rest of the EULA. Any provision of Software for evaluation purposes shall be temporary only.

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

8.3 Any right to use the Software shall expire automatically upon (a) the Customer not complying with the terms of this EULA and (b) upon the expiry of the evaluation period. Customer acknowledges that some products come with time-limited license keys and will automatically disable themselves upon the expiry of the evaluation period.

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

8.5 The Customer may, at any time during the evaluation period, upgrade to a regular version. Details of the upgrade shall be arranged with Unify or the Unify-Partner.

8.6 Evaluation copies of Software obtained from Unify are provided "as is" and without any warranty whatsoever. The Customer uses the Software during the evaluation phase at its own risk, expense and liability. Unify and its suppliers do not provide any warranty for the performance or the results arising from the use of the Software or the accompanying material. Unify nor its suppliers do not accept any warranty or guarantee that third-party proprietary rights are not infringed upon, nor that the Software is marketable or suitable for any specific purpose. The Customer's statutory rights in case of fraud (*Arglist*) or intent (*Vorsatz*) shall not be limited thereby.

8.7 Any claims of Customer for damages or compensation, regardless of their legal basis, and in particular claims arising from production stoppage, loss of profit, loss of information and data or subsequent damage are excluded. This does not limit Unify's liability for intent (*Vorsatz*), under product liability laws, in cases of bodily harm, or for guarantees. The exclusion does also not apply to other cases where liability is mandatory.

9. General terms

9.1 If individual terms of this EULA are found to be legally ineffective or impracticable on legal grounds, the remaining terms shall not be affected thereby. The parties will conclude an agreement that will cause the ineffective or impractical term to be replaced by a term that is as equivalent as possible in economic terms.

9.2 Changes, subsidiary agreements and amendments must be made in writing. This also applies to any waiver of this written form requirement.

9.3 These License Terms are governed by substantive German law under exclusion of the conflict of laws provisions and of the UN Convention on Contracts for the International Sale of Goods (CISG).

9.4 The place of jurisdiction shall be Munich, unless another court venue is mandatory by applicable law.