General Terms and Conditions for Software of CANCOM Austria AG (GTC-Software)

1. Scope of application

1.1 The *sale* of software, the *provision of* software licenses for the use of software and the provision of other software services to the customer shall be carried out by CANCOM Austria AG (hereinafter referred to as "**CANCOM**") on the basis of these General Terms and Conditions for software (**GTC-Software**) as amended from time to time. For the *delivery of* systems and system components, including software products, the General Terms and Conditions of Delivery of CANCOM Austria AG shall take precedence. *Services* for software solutions are primarily governed by the General Terms and Conditions for Service Contracts of CANCOM Austria AG and the corresponding Service Level Agreements (SLA) according to the offer or Marketplace.

1.2 Any future version, update or other extension of the functionality of the software products is subject to these terms and conditions.

1.3 Deviations from the requirements set out in section 1.1 shall only be effective if they have been acknowledged in writing by a representative authorized by CANCOM (see also section 26.2). General terms and conditions or any legal terms and conditions of the customer shall not become part of the contract, even if they are attached to requests for quotations, orders or declarations of acceptance or reference is made to them, e.g. by means of links, and are not contradicted by CANCOM, unless they have been expressly recognized by CANCOM in writing. CANCOM's performance of the contract shall under no circumstances be deemed to constitute consent to contractual terms and conditions which deviate from CANCOM's terms and conditions.

2. Definitions

2.1 Software: Unless otherwise defined in the manufacturer's terms and conditions, software within the meaning of these terms and conditions is understood to mean computer programs distributed as standard or individually developed or adapted for the customer within the meaning of section 40a UrhG (Austrian Copyright Act) for use on, for the operation or for the control of electrotechnical and/or electronic equipment and systems, including documentation provided for this purpose.

Software also means the object code form of the proprietary software products provided by the manufacturer under this contract, regardless of whether it is an on-premise or XaaS offering, and includes all accompanying components, files, modules, audiovisual content,

activation keys, documentation, updates and upgrades to which the customer is entitled under this contract.

2.2 In these General Terms and Conditions for software, the words and expressions have the meanings defined in **Appendix ./1** (Definitions). Further definitions are listed in the annexes to specific services and shall have the same meaning.

3. Subject matter of the contract

3.1 Software license

3.1.1 The scope of services and related services are defined in more detail in the offer and any appendices (e.g. SLA).

3.1.2 The customer may only use the software (regardless of the form in which it is provided) if he has read and fully accepted these General Terms and Conditions for software, including the data protection provisions and (end user) license/user agreement of the manufacturer.

3.2 Test/beta license

3.2.1 If the software is offered as an evaluation, test, beta or community edition license, the customer receives a limited, time-limited, non-exclusive, non-sublicensable, non-transferable license to use such licenses for testing purposes only, to use the software only for internal demonstration, testing or evaluation purposes in a non-production environment for the period specified on the software license key, notwithstanding anything to the contrary in this Agreement.

3.2.2 Notwithstanding anything to the contrary in this agreement, the evaluation, test, beta or community edition software is provided "AS IS". Without support or warranty/guarantee of any kind, either express or implied. Liability is mutually excluded except for personal injury.

3.3 Documentation

3.3.1 CANCOM shall, at its own discretion, provide the documentation associated with the software either in electronic form or for download at no additional cost. If it is clear from the offer that the documentation is not included in the scope of delivery, it must be purchased separately; in this case the customer has no right of reproduction but must purchase the desired number of copies of the documentation.

3.4 Software support contracts (manufacturer)

3.4.1 Standard support and maintenance services, updates and upgrades may be included in the price of the software, depending on the manufacturer, if purchased as a

subscription license or XaaS offering. With some manufacturers, support and maintenance services for the software can be purchased or upgraded separately. Apart from the conditions set out herein, there is generally no right to updates or upgrades without the conclusion of a support and maintenance contract. All support and maintenance services are subject to the current terms and conditions of the manufacturer, which can be found at Additional Information on Services (cancom.at), or directly on the manufacturer's homepage, as well as the corresponding end-of-life guidelines, which can also be found at Additional Information on Services (cancom.at) or directly on the manufacturer's homepage.

3.4.2 No service contracts can be concluded if no support contracts have been concluded with the manufacturer.

3.4.3 If further services are provided by the manufacturer without additional remuneration, the customer has no claim to their provision unless these services are explicitly included in the offer.

3.5 (Usage) rights to the software

3.5.1 After full payment of the agreed fee, the customer shall receive the non-transferable, non-exclusive and non-sublicensable right to use the software for the contractually agreed purpose in compliance with the contractual specification at the agreed installation site for the duration of the contract in accordance with the terms of use of the manufacturer or supplier (e.g. EULA). In the case of supplied hardware, this right is limited exclusively to use on this hardware.

3.5.2 All software licenses are requested from the licensor in accordance with the customer data available to CANCOM at the time of conclusion of the contract (company name, company address, legal form and VAT number) and can only be changed thereafter with the consent of the licensor. Provided that the licensor grants this consent, the additional expenses associated with the modification of the software license shall be invoiced to the customer according to actual expenditure.

3.5.3 In the event of any cooperation by the customer in the production/further development and/or adaptation of software to the customer's requirements, no rights of any kind whatsoever shall be acquired beyond the use specified in the present contract.

3.5.4 For third-party software products provided to the customer by CANCOM the respective license terms of the manufacturer, which are available under Additional information on services (cancom.at) in the currently valid version or by reference in the offer, shall take precedence, whereby these terms may change from time to time and shall then apply in the current valid version. The customer is aware of this fact and expressly agrees to accept these amended license conditions of the manufacturer. This shall also apply to the provision of software products manufactured by CANCOM. If

CANCOM is the manufacturer, the license conditions of CANCOM, which apply specifically to these products, shall take precedence.

3.5.5 When retrieving licensed third-party software, the customer is obliged to view and comply with the license terms available to him upon retrieval before using this software. CANCOM shall not be liable for claims of the licensor in the event of a breach of the license terms by the customer. The customer undertakes to indemnify and hold CANCOM harmless in this connection. CANCOM accepts no liability for software retrieved by the customer, including public domain or shareware, which is neither created nor offered or supported by CANCOM.

3.5.6 The customer is obliged to maintain all legally prescribed copyright and proprietary notices in the software products and the associated documents and not to remove or change them.

3.5.7 **Open Source software**:

3.5.7.1 If the software contains open source software, this is listed in the respective manufacturer's terms and conditions. The customer is entitled to use the open source software in accordance with the applicable open source software license conditions. These are attached to the software and take precedence over these terms and conditions.

3.5.7.2 CANCOM shall make the open source software source code available to the customer at the customer's request against payment of a corresponding reimbursement of expenses, insofar as the license conditions for the open source software provide for such a release of the source code.

3.5.8 Unless a separate agreement is made, no further rights to software products are transferred to the customer. The rights of the customer pursuant to §§ 40(d), 40(e) Austrian Copyright Act are not affected by this.

3.5.9 All documents provided to the customer by CANCOM, in particular the documentation for software products, may not be reproduced or distributed in any way, whether for payment or free of charge.

3.5.10 All other rights to the software are reserved by the licensor or CANCOM. Without the prior written consent of the licensor, and notwithstanding the provisions of section 40d of the Austrian Copyright Act, the customer is therefore in particular not entitled to sell, rent, lend, sublicense, assign or transfer, reproduce either in whole or in part, modify, reverse engineer, reset, remove parts, make accessible to third parties or use on other hardware, analyze, decompile or disassemble the software, insofar as certain dependencies exist between this software and the hardware.

3.5.11 When using software subject to license, the customer must observe the respective

software license terms and the terms of use specified by the respective manufacturer for this software. CANCOM will provide the customer with these terms and conditions in the original language on request; CANCOM is not obliged to translate them into German.

3.5.12 The delivery and/or deposit of the source code of standard software is not part of the scope of services under any circumstances, and in the case of individual software - unless otherwise agreed - not part of the scope of services.

3.5.13 Any infringement of these rights by the customer shall in any case result in claims for injunctive relief and damages, whereby full satisfaction shall be provided in such a case.

3.5.14 In the event that the manufacturer of the software withdraws the rights to use the software from the customer due to violations of the terms of use and license conditions, the customer must continue to pay the agreed fees.

3.6 Additional services and deliveries, such as those listed below, shall be provided on the basis of separate agreements (e.g. via Change Requests) and invoiced at CANCOM's current list prices, unless they are covered by an existing service level with CANCOM:

- work for duplicating, translating or generating the software as well as services in accordance with section 7.5;
- data carriers supplied by CANCOM, unless they are part of the scope of delivery;
- analyzing and eliminating malfunctions caused by improper handling or errors in the operation or use of the software or other circumstances for which CANCOM is not responsible;
- support with the introduction of the software and training, unless the contract contains provisions to this effect;
- software updates
- upgrades, system support
- maintenance work on deliveries and services that go beyond any obligations arising from warranty claims.

4. Obligations of the customer

4.1 The customer is responsible for:

- the selection from the software offered by CANCOM;
- in the case of customized software, for the transmission of all information required for the creation of the software in order to draw up the specifications prior to the conclusion of the contract;
- the use of the software and the results achieved with it;

- the installation of new versions and updates made available to him, unless these services are regulated in the scope of services of a separate contract;
- the preservation of all rights of the licensor (such as industrial property rights, copyright including the right to copyright notice) to the software in accordance with section 11.7.

4.2 The customer undertakes to use the object of performance in accordance with the contract and to indemnify and hold CANCOM harmless in this respect. With regard to the legal consequences of any infringement of intellectual property rights of third parties by the customer or third parties attributable to the customer, section 11.ff applies.

4.3 In order to use the specified services, the customer must have access to the internet. This is not part of the scope of services. The software can cause the customer's computer to automatically establish a connection to the internet without notification and to communicate with a website or domain of the manufacturer in order to check the software license and to provide the licensor with additional information, features and functions. The manufacturer's data protection provisions, which are available on the respective homepage, apply to such a connection and communication.

5. Software specifications

5.1 CANCOM provides the specifications for standard software in accordance with the manufacturer's requirements. CANCOM is entitled to change the software specifications for new versions.

5.2 For individual software ordered by the customer, a specification sheet must be agreed in writing between the customer and CANCOM. Software specifications may include, for example, performance features, documentation on special functions, hardware and software requirements, installation requirements, operating conditions, operation (user manual). The customer is responsible for compliance with the software specifications.

5.3 The contractual software can be used with existing systems or migrated to subsequent technologies to the extent that this is possible due to the product policy of the respective manufacturer (e.g. upward and downward compatibility of products or product lines, mutual support of products or product lines). CANCOM will not investigate any compatibility problems, and therefore CANCOM does not make any compatibility commitment in this respect. Any additional costs for migrations that may be necessary due to the product policy of a manufacturer are therefore not part of the offer and will not be borne by CANCOM.

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6. Anything as a Service (XaaS)

6.1   Unless otherwise specified in the other parts of the contract, the following applies in any case with regard to services from the XaaS area:

6.2   CANCOM shall provide the customer with the respective XaaS product in the jointly agreed version in the form of an XaaS service for use for the duration of the contractual relationship.

6.3   All requirements for the XaaS products are described in detail in the offer or in the other contractual components (annexes) and the General Terms and Conditions for XaaS products shall take precedence.

6.4   The XaaS products are accessed and used by the customer via the internet, which is provided by the customer to the necessary extent (e.g. bandwidth).

6.5   The customer shall pay CANCOM a usage fee for use and operation.

6.6   The monthly fee depends on CANCOM's pricing, as the XaaS model enables different pricing models. Possible pricing models are listed in detail in the offer. Price models can be e.g. per user/month, depending on the range of functions, depending on the number of transactions.

6.7   **Freemium:** This pricing model provides the customer with a free basic version, which is extended by paid services.

6.8   However, other price models may also be used, such as billing according to data volume or CPU hours used or a constant price over a specific contract term. CANCOM reserves the right to charge the customer separately for implementation costs in addition to the price models mentioned here, depending on the work involved.

6.9   For hardware subscriptions (Hardware as a Service), the General Terms and Conditions for the respective product (e.g. GTC-HPE GreenLake) shall take precedence.

7. Delivery and transfer of risk

7.1   CANCOM shall deliver the software to the customer in machine-readable form (object code). This is done by making it available in electronic form (e.g. download). At the customer's request, the software may be supplied in the form of a physical data carrier, provided this is made available by the manufacturer. If this is not the case, a separate charge will be made. CANCOM shall be entitled to supply the latest version at the time of delivery.

7.2   If no delivery date is agreed, CANCOM will notify the customer of the delivery date or the start of the period of use.

7.3   The delivery (including the transmission of the license key) or provision of software shall be at the expense and risk of the customer. In addition to the provisions in the General Terms and Conditions of Delivery, if software is provided by means of electronic communication media (e.g. via the internet), the risk is transferred when the software leaves the manufacturer's/supplier's sphere of influence (e.g. during download).

7.4   CANCOM is neither responsible for the functioning of the transmission path nor for the installation or for any tests and the integration of the software into the customer's existing hardware and software environment.

7.5   If software in the customer's possession is damaged or deleted in whole or in part, CANCOM shall supply a replacement within the limits of availability and reasonableness against payment of reasonable prices for processing and replacement.

8.   Retention of title

8.1   All delivered systems and system components shall remain the full property of CANCOM until full payment has been made.

8.2   Provided Software remains the full property of CANCOM or the respective manufacturer.

8.3   CANCOM reserves the right to retrieve the delivered systems or system components or to deactivate the software provided while maintaining the contract if payment is not made in full by the due date despite a reminder.

9. Warranty and liability for defects

9.1   In the case of software, CANCOM warrants conformity with the specifications valid at the time of conclusion of the contract, provided that the software is used in accordance with the applicable installation requirements and under the applicable conditions of use. No warranty claims may be derived or liability established from information in catalogs, brochures, advertising material and written or verbal statements that have not been included in the contract.

9.2   CANCOM does not assume any warranty for software that is neither created nor offered by CANCOM and is not liable for defects and damages caused thereby. Contestation on the grounds of error is excluded. CANCOM accepts neither liability nor warranty for application errors made by the customer and in the event of unauthorized modification or configuration of the software by the customer or by CANCOM in accordance with the customer's specifications, plans or tenders, and the customer shall indemnify and hold CANCOM harmless in this respect in the event of infringement of any

copyrights or other industrial property rights.

9.3 The warranty covers

- fault diagnosis
- troubleshooting and fault rectification

for the duration of the warranty obligation. Fault diagnosis shall be carried out on the basis of an immediate, qualified fault report from the customer or findings by CANCOM. Any malfunctions must be reported by the customer to CANCOM immediately and in detail in writing.

9.4 Unless otherwise agreed, a warranty period of six months from the transfer of risk shall apply, unless acceptance has been agreed or delivery in accordance with section 7 takes place. The limitation period shall commence immediately at the end of the warranty period. The burden of proof that the defect already existed at the time of delivery shall be borne by the customer.

9.5 The prerequisite for warranty claims is in any case an immediate notification of defects within the meaning of § 377 UGB (Austrian Commercial Code), as well as an immediate inspection or testing of the software upon delivery.

9.6 § 924 ABGB (Austrian General Civil Code) "Presumption of defectiveness" is excluded by mutual agreement. For hardware and software provided by third parties, the warranty conditions of the respective manufacturer shall take precedence.

9.7 CANCOM assumes no liability

a) for third-party software that is not part of the contract; or
b) for the interaction of the software with other software programs in use or planned or modified by the customer; or
c) for merely short-term, software-typical functional interruptions or malfunctions; or
d) for faults, malfunctions or damage caused in particular by improper cabling, inadequate power supply or air conditioning and operation as well as non-compliance with safety regulations by the customer or one of his employees and transport damage.

9.8 The warranty expires if

a) improper handling by the customer or other authorized users or
b) errors in operation by the customer or other authorized users or
c) use of the software by the customer or other authorized users in violation of the license or
d) use by third parties without the prior written consent of CANCOM or
e) changes to the software made by the customer himself or by third parties

without the prior written consent of CANCOM, even if the error occurs in a part that has not been changed, or

f) changes to the hardware or hardware configuration originally defined for the software installation by the customer or third parties.

9.9   The elimination of errors, i.e. function-disrupting deviations from the valid specifications, shall be carried out at CANCOM's discretion either by implementing a workaround or by modifying the program accordingly. Changes to the program through the installation of patches (e.g. bug fixes or similar) are only to be made once these patches have been released by the manufacturer. In this case, CANCOM shall in any case have the option of waiting until this point in time to rectify the error. The verification of such patches shall be carried out exclusively by the manufacturer and not by CANCOM itself. Further claims based on the defectiveness of the software are excluded. These provisions shall also apply mutatis mutandis to any liability for defects on other legal grounds. The customer is not entitled to unilaterally assert a reduction in charges by deduction from the current/recurring charges.

9.10   A statutory updating obligation within the meaning of Directive (EU) 2019/771 is excluded for goods with digital elements and for digital services.

9.11   The prerequisite for any rectification of errors is that the error is a malfunctioning error, that it is reproducible, that the customer has installed any new versions and updates offered to it free of charge within the warranty period, that CANCOM receives from the customer all documents and information necessary for rectifying the error and that CANCOM is given access to the hardware and software during the customer's normal working hours.

9.12   If it is determined during the error diagnosis that there is no warranty case or that the cause of the error does not lie in the delivered software, the customer shall bear all costs incurred as a result, even if a software maintenance contract has been concluded.

9.13   Furthermore, CANCOM is not liable for malfunctions and failures due to force majeure. The warranty does not cover the replacement of parts that are subject to natural wear and tear. Faults, malfunctions or damage caused by operating errors or improper use on the part of the customer or its employees are not covered by the warranty.

9.14   CANCOM does not warrant that the software functions will meet the customer's requirements, that the programs will work together as selected by the customer, that they will run uninterrupted or error-free or that all software errors can be eliminated.

9.15   In the case of the delivery and provision of standard software, the software products correspond to the current state of the art. However, CANCOM does not guarantee their absolute security and is not liable for this. Nor shall CANCOM be liable for any disadvantages arising from the fact that the system installed at the customer's

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premises is circumvented or rendered inoperable.

9.16   If the software does not conform to the specifications in a functionally disruptive manner while the warranty is still valid and if CANCOM is unable to achieve conformity with the specifications within a reasonable period of time despite sustained efforts (in the event that a patch is required by the manufacturer, not before the corresponding patch is available), either party to the contract shall have the right to terminate the contract for the software in question with immediate effect in return for reimbursement of the services received.

9.17   Defects in individual software components do not give the customer the right to terminate the contract with regard to the entire software product.

9.18   If the customer has not concluded a software maintenance contract with the manufacturer or a service contract with CANCOM, CANCOM shall charge for maintenance (e.g. fault diagnosis and rectification, maintenance, etc.) that is not covered by the rectification of defects in accordance with the applicable list prices of CANCOM or the manufacturer.

10. Cybersecurity

10.1   The contracting parties undertake to protect their information technology (IT), such as hardware, software, IT systems, networks, internet-enabled applications, cloud applications used by them, common IT interfaces, as well as all information and data contained therein, from IT security incidents by means of appropriate and suitable technical and organizational measures. An "IT security incident" is any loss or unauthorized deletion, destruction, modification, disclosure, unauthorized access to or unauthorized control of IT infrastructure, as well as any other unauthorized direct or indirect impact on the infrastructure of a party.

10.2   When CANCOM supplies software, the customer is solely responsible for designing, implementing and maintaining a state-of-the-art security concept that protects its information technology. Such a concept includes, among other things, the installation of updates as soon as they are available to the customer in accordance with CANCOM's installation instructions and using the latest product versions, the observance of security instructions, the installation of patches and the implementation of related measures. Software developed by CANCOM shall be tested by CANCOM in accordance with the current state of the art before it is delivered or made available to the customer.

10.3   If a Party becomes aware of a possible IT security incident and it cannot be ruled out that the security of the IT infrastructure of the other Party is or could be impaired as a result, the affected Party shall notify the other Party of the IT security incident in a timely

manner. The notification shall describe the possible cause and manner of the IT security incident and contain appropriate information on the reasonably expected effects on the IT infrastructure of the other Party, insofar as a reasonable assessment of the facts is already possible at this time. A later assessment or changes to an existing assessment must in turn be notified to the other party accordingly. This notification is subject to confidentiality.

10.4 The contracting party affected by an IT security incident is in any case obliged to take appropriate and proportionate measures in relation to the severity of the IT security incident in order to avert or - if this is not possible - limit the effects on the IT infrastructure of the other contracting party.

11. Intellectual property rights and copyright

11.1 CANCOM shall support the customer in the defense against all claims based on the fact that software used in accordance with the contract infringes an intellectual property right or copyright valid under Austrian law. The customer shall notify CANCOM immediately in writing and, in the event of a legal dispute, shall serve a third-party notice pursuant to § 21 ZPO (Code of Civil Procedure) if such claims are asserted against it. If claims are asserted based on the infringement of intellectual property rights for which CANCOM is responsible, CANCOM may modify or replace the software or obtain a right of use at its own expense. If this is not possible with reasonable effort, the customer must return the original and all copies of the software, including any documents provided, without delay at CANCOM's request.

11.2 All claims of the customer relating to the infringement of intellectual property rights and copyright are hereby conclusively settled, to the exclusion of any further obligation of CANCOM.

11.3 Implementation documents, such as plans, sketches and other technical documents, as well as the offer itself, samples, catalogs, brochures, illustrations, etc., shall always remain the intellectual property of CANCOM and are subject to the relevant statutory provisions regarding reproduction, imitation, etc. In addition, any use, in particular the passing on, reproduction, publication and making available, including the copying of extracts, requires the express written consent of CANCOM, unless this is necessary for the fulfillment of the contract.

11.4 The customer shall take technical or other measures to ensure that the software does not fall under the same OSS license conditions as the open source software used by the customer.

11.5 For software for which CANCOM has only a derived right of use (third-party

software), the terms of use agreed between CANCOM and its licensor shall apply in addition and with priority over these Terms and Conditions, insofar as they affect the customer (e.g. End User License Agreement). CANCOM shall refer to these and make them available to the customer on request.

11.6   With the exception of section 11.3 the customer is in any case prohibited from distributing or reproducing any of the documents described above in any form whatsoever. The customer shall store them carefully, protect them from unauthorized access and return them to CANCOM upon request or in the event of termination of the contract negotiations or termination of the contract without being requested to do so. The customer shall have no right of retention.

11.7   The customer is responsible for safeguarding all rights of the licensor (such as industrial property rights, copyright including the right to copyright notice) to the software and for safeguarding CANCOM's claims to confidentiality of trade and business secrets, including by employees and vicarious agents of the customer or third parties; this also applies if the software has been modified or combined with other programs. This obligation shall remain in force even after termination of the contract.

11.8   In the event of an infringement of CANCOM's copyrights or the rights set out in section 11.3 and 11.8 the customer shall pay CANCOM a contractual penalty in the amount of 100% of the agreed remuneration. Any further claims for damages or injunctive relief shall remain unaffected. All of the above-mentioned documents may be reclaimed by CANCOM at any time and must be returned to CANCOM immediately and without request if the contract is not concluded.

12. Internet access and data protection

12.1   CANCOM undertakes to comply with the applicable data protection provisions of the GDPR and the DSG (Austrian Data Protection Act). Insofar as the customer passes on data to CANCOM, the customer shall be solely responsible for ensuring that all necessary third-party consents to the transfer of data to CANCOM have been obtained and that all data processing applications comply with data protection law. The customer shall indemnify and hold CANCOM harmless in respect of all claims in this regard.

12.2   If personal data is processed by CANCOM (as processor) on behalf of the customer (as controller) as part of the provision of services, this constitutes commissioned processing within the meaning of Art. 28 GDPR. This order processing is carried out exclusively on the basis of a <u>unilateral declaration of commitment</u> on the processing of personal data by CANCOM, which corresponds to the legal extent.

12.3   In the event that CANCOM is the controller in the context of order processing and

the customer is the processor, an appropriate agreement on the processing of personal data within the meaning of Art. 28 GDPR shall be concluded separately between CANCOM and the customer.

12.4   Insofar as the customer provides the manufacturer of the software products with personal data, the data protection provisions of the respective manufacturer shall apply to the management and use of the data.

13. Links to other websites

13.1   Links from CANCOM to third-party websites or services / manufacturers are provided in good faith and are not under the control of CANCOM and CANCOM assumes no responsibility for the content and privacy policies of these services or third-party websites. CANCOM is therefore neither directly nor indirectly responsible nor liable for any damage or loss caused or allegedly caused by the connection and use of these services.

14. Liability

14.1   In the event of non-compliance with any conditions for installation, implementation and use (such as those contained in operating instructions) or official approval conditions, any compensation for damages is excluded.

14.2   CANCOM or its vicarious agents shall only be liable for personal injury and damage to property for which CANCOM is responsible insofar as statutory provisions, e.g. due to intent or gross negligence or provisions of the Product Liability Act, provide for mandatory liability that cannot be excluded by contract. Otherwise CANCOM excludes all liability, in particular liability for slight negligence, for claims arising from business interruption damage, loss of data and/or information, failure of data processing equipment, software damage, loss of profit, unrealized savings, loss of interest, consequential and financial loss and damage arising from third-party claims against the customer. CANCOM shall also not be liable for the content of transmitted data.

14.3   Claims for damages shall lapse 12 months after the time at which the customer became aware of the damage and the party causing the damage.

14.4   The customer shall indemnify and hold CANCOM harmless in respect of claims for payment by manufacturers and suppliers arising from the use of services by third parties (including misuse), insofar as the customer is responsible for this.

14.5   With the exception of personal injury, CANCOM's liability is limited to the annual fee for the use of the software.

15. Force majeure

15.1 All unforeseeable events or events which, even if they were foreseeable, are beyond the control of the contracting parties and whose effects on the fulfillment of the contract cannot be prevented by reasonable efforts of the contracting parties, even if they occur at suppliers, shall be deemed force majeure within the meaning of these General Terms and Conditions for Software. These include war, riots, strikes, revolutions, military or civilian coups, epidemics or widespread viral diseases (e.g. in the form of epidemics or pandemics) and the associated (protective) measures ordered by state authorities, fire, floods, storms, earthquakes, lightning strikes, power failures, labor disputes.

15.2 If a case of force majeure occurs, the affected contractual party must inform the other party immediately in writing. The affected contracting party shall not be responsible for the resulting delay or impossibility of performance. The agreed delivery and performance period shall in any case be extended by the duration of the effect of the force majeure.

16. Improper use of the services

16.1 If a claim is made against CANCOM by a third party due to misuse of the services by the customer or if there is a threat of a claim being made against CANCOM, the customer shall inform CANCOM immediately. CANCOM shall give the customer the opportunity to defend against the claim or to obtain full legal redress.

16.2 The customer undertakes to compensate CANCOM for any damage suffered by CANCOM as a result of a proven infringement of third-party rights by the customer - in particular due to patent, trademark, design protection, semiconductor protection, copyright and other related claims (e.g. under the Unfair Competition Act) or claims based on personal rights or other industrial property rights.

16.3 The damages to be compensated shall also include payments for an out-of-court settlement of disputes, which CANCOM may agree to with the customer's consent. The customer may only refuse this consent for good cause and not unreasonably.

17. Terms of settlement and payment

17.1 If a <u>one-off fee</u> is agreed - this may be incurred instead of or in addition to ongoing usage fees - this is due as follows, unless otherwise agreed:

- 30% of the total price upon conclusion of the contract
- 70% of the price of each software service shown separately in the offer, in each case after installation or activation of the software.

17.2 If a <u>recurring fee</u> is agreed, invoicing shall take place in advance for the period of use specified in the offer, unless otherwise agreed. If no such agreement has been made, billing shall take place annually in advance.

17.3 Fees for the software purchased as a subscription license or as XaaS are payable either i) as a lump sum for the entire initial term or renewal term at the time of purchase or ii) according to the annual payment schedule specified in the invoice for each year of the initial term or renewal term.

17.4 Non-Extensions must be notified to CANCOM in good time in accordance with the manufacturer's terms and conditions in order to prevent an automatic extension (renewals) and thus trigger a payment obligation.

17.5 Services will be provided either (a) on a prepaid basis, which will be invoiced upon receipt of an order, or (b) on a time and materials basis, which will be invoiced upon performance and completion. In the event that the services are provided on site, the applicable list prices and billing rates of CANCOM's customer service center shall apply based on actual time and material expenditures.

17.6 In the event that the fee is calculated according to actual use (consumption based), the number of expected uses according to the information provided by the customer and/or system shall be used for the initial billing and for further ongoing billing. Increases or decreases in usage and their billing are based on the manufacturer's license and usage terms.

17.7 Invoicing shall take place at periodic intervals depending on the agreed service. The obligation to pay arises on the day following provision or installation. All invoices are due for payment immediately after invoicing, unless another due date is specified in the invoice. The invoice amount must be credited to the specified account by the due date stated on the invoice at the latest. Any transfer, collection and chargeback costs shall be borne by the customer.

17.8 Any price adjustments, including value adjustments, made by the manufacturer or supplier shall be passed on to the customer in the same way. The customer undertakes to pay such price adjustments.

17.9 Even in the event of default of payment through no fault of the customer, the customer shall pay 1% interest per month. CANCOM shall in any case be entitled to claim further damages in the event of default of payment by the customer or to charge pre-litigation costs, in particular reminder and collection charges and legal fees.

17.10 In the event of the opening of insolvency proceedings against the customer's assets, CANCOM shall be entitled to charge the fee for the duration of the insolvency

proceedings monthly in advance from the opening date. In the case of consumption-based billing, the fee to be paid in advance shall be calculated on the basis of the average consumption of the last 3 months. The fee from the day of the opening of insolvency proceedings to the end of the current month shall be calculated on a pro rata basis. The same applies if the customer's creditworthiness deteriorates.

18. Electronic invoicing

18.1   Invoices may, at CANCOM's discretion, be sent in electronic form by e-mail or in paper form. In the case of electronic invoices, the customer must ensure that these can also be retrieved. The customer undertakes to provide CANCOM with its own e-mail address which is set up exclusively for the receipt of electronic invoices. The CANCOM e-mail address is only a dispatch address for sending electronic invoices; it is not possible to receive e-mails.

18.2   Electronic invoices are created in "portable document format" (pdf) and are not signed. It is not possible to receive electronic invoices and paper invoices at the same time. One pdf file is created per invoice. Each invoice is sent individually by e-mail.

18.3   The electronic invoice is deemed to have been received as soon as it can be retrieved or taken note of under normal circumstances.

18.4   Reminders will be sent in paper form to the billing address provided.

18.5   If an electronic invoice cannot be delivered, CANCOM reserves the right to send the invoice in paper form to the customer's postal address last notified to CANCOM.

18.6   The customer may revoke the electronic delivery of invoices at any time in writing and with a legally valid signature (by post or scanned by e-mail or fax). Thereafter, the customer will receive future invoices by post to the postal address last notified to CANCOM. CANCOM reserves the right, for good cause, to change the delivery of invoices independently to the postal address last notified to CANCOM.

19. Taxes and fees

19.1   All agreed prices and fees do not include value added tax; this will be invoiced separately. If fees, taxes or other charges (in particular customs duties, import sales taxes, withholding taxes, etc.) become due in connection with the provision of the subject matter of the contract, these shall be borne by the customer.

20. Duration and termination

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20.1 The duration of the right of use shall be governed by the license agreement to be concluded with the manufacturer and, with regard to any software maintenance services, by the provisions of the respective service agreement. The right of use ends in any case

- upon expiry of the agreed period of use;
- at the end of use on the contractual hardware, without this having any influence on the usage fee to be paid in accordance with the contract;
- by written termination after expiry of any agreed minimum period of use and - in the absence of any other agreement (e.g. terms of use (EULA) of the respective manufacturer) - subject to one month's notice to the end of the month;
- by premature termination in the event of serious breaches of contract if the contractual condition is not restored within a reasonable grace period set in writing;
- by premature dissolution in the event of the opening of insolvency proceedings against the customer's assets or if an application to open insolvency proceedings is rejected due to a lack of sufficient assets. This dissolution shall take effect immediately upon the declaration that the company will not be continued. In the event that the company is continued, the dissolution shall not take effect until 6 months after the opening of insolvency proceedings.

20.2 If the contract is terminated prematurely, the manufacturer may charge all unpaid fees for the remainder of the initial term or the renewal term and invoice the customer. ("termination fee"). In addition, the manufacturer may charge the customer for all pending renewal fees if the customer does not terminate the contract in writing in good time before the end of the initial term or a renewal term ("renewal fee").

20.3 A claim for reimbursement or crediting of unused fees in the event of termination is excluded in any case.

If dissolution is essential to avert serious economic disadvantages for CANCOM, it shall take place with immediate effect.

20.4 Upon termination of the contract, all rights granted shall expire and the customer undertakes to immediately remove and destroy all copies of the software, including all backup copies and documents provided. All obligations to pay fees or expenses, including any applicable termination fee and/or renewal fee, incurred prior to or at the time of termination shall survive termination. This also applies to modified software or software associated with other programs.

CANCOM accepts no liability whatsoever if data is deleted in the course of termination of the contract. The customer must make an appropriate local backup of the data before the contract is terminated.

21. Confidentiality

21.1 The customer undertakes to keep confidential information in accordance with Annex ./1 section 1.14 of CANCOM and its affiliated companies within the meaning of § 15 AktG (Austrian Stock Corporation Act), its employees, customers and suppliers, which become known to it directly, indirectly, orally or in writing on the occasion of or in connection with the performance of this contract.

21.2 Non-confidential information is information that

    21.2.1 are already generally known or intended for publication or

    21.2.2 were already in the customer's possession prior to disclosure and were not directly or indirectly made available by CANCOM prior to disclosure, or

    21.2.3 were regularly made available to the customer by a third party without an obligation of confidentiality or

    21.2.4 developed or obtained independently of CANCOM without breaching this Agreement.

21.3 The customer is further obliged to use product, company and business secrets of CANCOM which have been entrusted to the customer and/or the persons or which have become known to the persons on occasion, as well as incidentally received data, exclusively in connection with the execution of this contract and not to disclose them to third parties either in part or in full. The customer confirms that it has been informed of a possible criminal liability pursuant to § 17 UWG (Unfair Competition Act).

21.4 Without the written consent of CANCOM, the customer shall not be entitled to use, process, pass on to third parties or exploit in any form whatsoever the data to third parties not involved in the performance of this contract, either in whole or in part.

21.5 The customer may only make the data accessible to persons whom it has obligated in writing to maintain confidentiality to the same extent. The customer shall provide CANCOM with proof of this immediately upon request.

21.6 The customer is obliged to compensate CANCOM for all damages and expenses arising from the breach of the non-disclosure agreement by the customer and its persons. The burden of proof that the non-disclosure agreement has not been culpably breached lies with the customer.

22. Audit rights

22.1 CANCOM and the manufacturer have the right to check compliance with the contractual regulations and the contractual performance once a year and/or if there is an

important reason. The audit shall be carried out in accordance with the applicable technical standards of CANCOM or the manufacturer. The customer undertakes to provide CANCOM with the information necessary to monitor compliance with the obligations set out in this agreement. This right of inspection also includes the possibility for CANCOM and the manufacturer to inspect the customer's business premises at any time during normal working hours and without disrupting operations. This inspection must be announced in writing at least one month in advance and may not exceed three working days.

22.2 If defects are identified in the course of an inspection or audit, the customer shall rectify these immediately at its own expense, at the latest within the period agreed between the customer and CANCOM or the manufacturer. The costs of carrying out an audit shall generally be borne by CANCOM or the manufacturer, unless incorrect licensing or sublicensing is discovered during the audit. Personnel costs are not included in this assumption of costs. These shall be borne by each contracting party itself. However, if defects are identified in the course of the audit, the customer shall bear the costs of rectifying the defect and the costs of any follow-up audits resulting from the identification and rectification of the defect.

22.3 With regard to XaaS, access to and use of the XaaS licenses is continuously monitored by the manufacturer. In the event of incorrect licensing or under-licensing, it is possible that the manufacturer will initiate a remote audit to determine the reason for non-compliance with the contract.

23. Export restrictions

23.1 The customer shall comply with all applicable provisions of sanctions, embargo and (re)export control law, and in any case those of the European Union, the United States of America and any locally applicable jurisdiction (together "Export Law").

23.2 Unless permitted under export law or on the basis of corresponding official licenses or approvals, the customer shall not

(i)   download, install, access or use the software, documentation and/or services from or at a location from or to which access is prohibited or restricted due to comprehensive sanctions or subject to authorization under export law;

(ii) grant access to, transfer, (re-)export (including deemed (re-)exports) or otherwise make available software, documentation and/or services to any company, person or organization listed on a (sanctions) list under export law or owned or controlled by a listed party;

(iii) use the software, documentation and/or services for a purpose prohibited under export law (e.g. in connection with armaments, nuclear technology or

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weapons);

(iv) enable the aforementioned activities for a user of the software, documentation and/or services.

23.3 The customer warrants that it and its affiliates are not on any "Denied Persons" or "Restricted Party" list or any other list of persons or entities published by the U.S. Government to which the export or re-export of products subject to export control is prohibited. The customer undertakes to notify CANCOM immediately if the assurances given in the preceding sentence are no longer applicable.

23.4 If required to comply with export regulations, the customer shall provide CANCOM with all information about the user(s), the intended use and the place of use of the software, documentation and/or services immediately upon request.

23.5 The customer shall indemnify CANCOM, its affiliates, suppliers and their respective agents against all claims, fines and costs (including attorneys' fees and expenses) in any way related to the customer's or its business partner's failure to comply with this clause or (alleged) violation of export law and undertakes to compensate CANCOM for all damages and expenses incurred in this connection.

23.6 Any transfer of the contractual items, documents and other materials, in particular any re-export, may be subject to authorization in accordance with the export regulations of the USA, the European Union and any other countries. In such a case, the customer shall be obliged to obtain the relevant authorizations from the authorities concerned before passing them on. This obligation must be contractually transferred to the respective purchaser or authorized party in the event of any new transfer.

23.7 Should it become apparent after conclusion of the contract that the delivery of the contractual components or parts thereof is subject to an export restriction of the United States of America, the European Union or possible other states and an export permit cannot be obtained, CANCOM shall be entitled to withdraw from the contract or from the affected part of the contract accordingly. The customer shall not be entitled to any claims on account of the withdrawal. If an export permit can be obtained, any resulting delays shall be borne by the customer. Regardless of whether an export permit can be obtained, the customer shall fully reimburse CANCOM for all resulting expenses and damages.

23.8 Specifically, the following applies to dual-use goods: an export license is required for the export of certain goods. The licensing requirement is based on certain technical product characteristics and applies to deliveries to all countries outside the EU, but in rare cases also to shipments within the EU. A distinction is made between military equipment and dual-use goods, which can be used for both military and civilian purposes. The goods concerned are recorded in lists of goods. In addition to goods, software and technology are also included in the definition of goods. The customer undertakes to classify dual-use

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goods independently and, in accordance with Article 11 (9) of the Regulation (EU) 2021/821, to clearly mark goods subject to approval on his business documents (e.g. purchase contracts, invoices, etc.), even in the case of intra-Community deliveries, e.g. by stating the list item.

24. Reservation clause

24.1 CANCOM's performance of the contract is subject to the proviso that there are no obstacles to performance due to national or international (re-)export regulations, in particular no embargoes and/or other sanctions. The customer acknowledges that CANCOM may be obliged under export law to restrict or block the access of the customer and/or the user(s) to the software, documentation and/or services.

25. Law and place of jurisdiction

25.1 The contractual relationships shall be governed exclusively by Austrian law to the exclusion of its conflict of law rules. The application of the UNCITRAL Convention of the United Nations on Contracts for the International Sale of Goods is excluded.

25.2 The competent court in Vienna shall have exclusive jurisdiction to decide on all disputes arising from the contractual relationships - including those concerning their existence or non-existence.

26. General/final provisions

26.1 The contractual relationship shall be governed by the rules of a mutual company-related transaction, even if one of the parties is not an entrepreneur. The customer shall inform CANCOM prior to the conclusion of the contract if the purchased system or system components are not intended for the operation of its business; otherwise the customer acknowledges that the conclusion of the contract is part of the operation of its business and that it is an entrepreneur within the meaning of the Austrian Consumer Protection Act.

26.2 Collateral agreements, amendments and supplements to contracts must be made in writing to be legally effective, including the original signature or qualified electronic signature, and shall only be effective if they have been acknowledged in writing by a representative authorized by CANCOM. This shall also apply to any waiver of the written form requirement. Verbal collateral agreements do not exist.

26.3 The contracting parties must notify each other immediately in writing of any changes to the name, company name, address, legal form, company register number,

paying agent, etc., failing which deliveries and payments may be made with legal effect to the last address or paying agent notified.

26.4 Should individual provisions of these terms and conditions or of the concluded contract be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision that comes as close as possible to the intended purpose.

Appendix ./1 - Definitions

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APPENDIX ./1 - DEFINITIONS

1.1 **(End) User** means a person who is employed by the customer or otherwise provides services to the customer (whether as an independent contractor or otherwise) and who is supported by or uses the software.

1.2 **Change requests:** Changes to the scope of services are made by means of so-called "change requests", which contain a precise description of the desired change, the reasons, the impact on the schedule and the expected costs. A change request only becomes binding once it has been legally signed by both contracting parties.

1.3 **Documentation** means the official product operating instructions, release notes and user manuals provided by CANCOM and/or the manufacturer for the software in electronic form and which are publicly accessible.

1.4 **End User License Agreement** (**EULA**) is the agreement between the end user and the respective manufacturer of the software for the use of the software and/or software as a service. The end user agrees to this in principle by providing, downloading, installing or, at the latest, using the software and/or software as a service or by express consent. The end user may not use the products if he does not agree to the terms and conditions.

1.5 **License types**

    1.5.1 **Perpetual License** is a license to use the software that is not limited in time when used in accordance with the terms of this Agreement.

    1.5.2 **Subscription license** is a time-limited license to use the software that either expires at the end of a specified period or is automatically extended by the renewal period. software licensed under a subscription license may contain a deactivation code that automatically deactivates it at the end of the subscription period.

    1.5.3 **Standard software** is software (programs, program modules, tools, etc.) that has been developed for the needs of a majority of customers on the market and not specifically by the manufacturer for the customer, including the associated documentation, and that is available on the market as a standard solution.

    1.5.4 **Customized software** is a software solution developed for the customer on the basis of a customer specification (functional specification, etc.).

1.6 The following **twelve (12) license models** exist within the **license types**

    1.6.1 Under the **consumption-based model**, the software can be used by a

specific user on any number of devices belonging to that user, unless otherwise specified in the invoice. A license is required for each user.

1.6.2   Under the **named user model** (per user), a named user is a single user who is authorized by the customer to access or use the software, regardless of whether the person uses the software or not. A license is required for each named user.

1.6.3   Under the **named end user model**, a named end user is a single user who is authorized to access and/or use the software in a self-service capacity to access services, report problems or use other tools within the software, whether or not the individual actually uses the software. A license is required for each named end user.

1.6.4   Under the **concurrent user model**, licenses are required for the maximum number of concurrent users authorized by the customer to access or use the software at any given time during any given period (each a "concurrent user"), regardless of the number of connections used by that person. A license is required for each concurrent user.

1.6.5   Under the **named analyst model**, a named analyst is an individual analyst authorized by the customer who is assigned a specific license to access or use the software, regardless of whether the individual uses the software or not. A license for a Named Analyst cannot be used by multiple analysts at the same time. One license is required for each named analyst.

1.6.6   Under the **concurrent analysts model**, licenses are required for the maximum number of concurrent analysts that the customer has permitted to access or use the software at any given time during a given period (each a "concurrent analyst"), regardless of the number of sessions used by that person. One license is required for each concurrent analyst.

1.6.7   Under the **per-device model**, licenses are required for each registered device or each device on which the software is deployed, regardless of whether it is a physical or virtual device.

1.6.8   Under the **device limited model**, licenses are required for each device on which the software is used. A license can only be transferred from one device to another device of the same brand and model in the event of accidental destruction.

1.6.9   Under the **asset-based model** (per asset), licenses are required for each asset, regardless of whether it is a physical or virtual asset that is tracked by or entered into the software.

1.6.10 Under the **concurrent connections model**, licenses are required for the

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maximum number of concurrent connections to the software at a given time during a given period (each a "concurrent connection"), regardless of the number of people making the connections. One license is required for each concurrent connection.

1.6.11 Under the **per throughput model**, throughput is determined by the total amount of data that is passed through or processed by the software, and access and ability to use the software is limited by the amount of throughput purchased by the customer.

1.6.12 A **usage-based pricing model** (metered license) is based on the actual use of a product or service. The usage metrics (such as the number of users, amount of data consumed or events) are recorded and billed accordingly.

1.6.13 Under the **"per instance" model,** a license is required for each specific implementation of the software used to implement the software product(s), and each implementation is referred to as an "instance".

1.7 **Service Level Agreements (SLA)** are those conditions that regulate the scope and quality of ongoing services in more detail.

1.8 **Source code**: also known as source text, is the human-readable text in a programming language. A computer can automatically translate this into machine language and make the program executable. Source code is made up of functions, descriptions, definitions, calls, methods and other operational instructions.

1.9 **Support and maintenance services** are the technical support and maintenance services for the software provided by the manufacturer within the scope of this contract or by means of a contract to be agreed separately with the respective manufacturer, otherwise there is no entitlement to updates, upgrades, extensions or improvements to the software or problem reports.

1.10 **Updates** are all updates, minor improvements, corrections, bug fixes, patches or functions that are added to or removed from the software, but not new software or functions that the manufacturer markets and sells separately. A distinction is also made between minor updates for minor adjustments (e.g. bug fixes) and major updates for major changes (e.g. new version). The version number indicates which update is available.

1.11 **Upgrades** are larger versions of a product that replace an earlier version of that product.

1.12 **Affiliated companies** are companies pursuant to section 189a (8) UGB (Austrian Commercial Code) whose annual financial statements are consolidated with those of CANCOM. In addition, affiliated companies are those companies over which CANCOM

can directly or indirectly exercise a controlling influence or which can exercise a controlling influence over CANCOM or which, together with the contracting party, are subject to the controlling influence of another company. This may be the case due to the ownership structure, financial participation or other regulations applicable to the company.

1.13 **Version** refers to one or more versions of the software with a common version designation.

1.14 **Confidential Information** means (i) any non-public information disclosed by one party to the other, directly or indirectly, whether in writing, orally or by inspection of tangible objects (including, but not limited to, pricing, trade secrets, product plans, products, services, customers, software, designs, inventions, processes, drawings, technical data, hardware configuration information, marketing or financial information) that is marked "confidential", "proprietary" or similar; and (ii) this Agreement, all non-public information relating to the software and all related training, documentation and other related materials, regardless of whether such materials are labeled "confidential," "proprietary" or similarly labeled.

1.15 **XaaS (Anything as a Service)** is a collective term that refers to the provision of products as a service. XaaS includes products, tools and technologies, such as SaaS, PaaS, IaaS, Backup-aaS, which are made available to users and maintained for a regular fee.

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