

End User Agreement

1. Subject Matter of the Agreement and Service Model

- a) Under the terms of this End User Agreement ("Agreement"), CANCOM provides the Client with the CANCOM FinOps Service ("Cloud Service"), which offers a centralized overview of multi-cloud costs. The Cloud Service is technically operated by IBM or a company engaged by IBM. CANCOM shall remain the Client's sole contractual counterparty.
- b) Orders shall become binding only upon written order confirmation by CANCOM or upon activation of the Cloud Service.

2. Incorporation and Flow-Down of IBM Terms

- a) The IBM terms and conditions set out below shall apply mutatis mutandis between CANCOM and the Client. References to "IBM" shall, to that extent, be deemed references to CANCOM.
- b) The versions available via the following links at the time of contract execution shall apply. The Client acknowledges that it had the opportunity to access, save and review these documents prior to submitting its contractual declaration:

- [IBM Client Relationship Agreement](#)
- [IBM Product Attachment for Cloud Services](#)

Should the documents referred to not be accessible via the links, the relevant archived documents shall form part of the contract.

- c) In the event of any conflict between the contractual documents, the following order of precedence shall apply:
 1. the order confirmation;
 2. this Agreement;
 3. IBM Product Attachment for Cloud Services;
 4. IBM Client Relationship Agreement.

The Client's general terms and conditions shall not apply even if they are attached for example to offer requests, orders, or acceptance declarations and even if they are not objected, unless CANCOM has explicitly acknowledged them in writing. Acts of performance by CANCOM shall under no circumstances be deemed to constitute consent to contractual terms and conditions that deviate from the terms and conditions set out herein.

3. Supplementary Provisions

- a) Third party suppliers of the Cloud Service disclaim any and all liability for consequential and other indirect damages and implied warranties, including the implied warranties of non-infringement, merchantability and fitness for a particular purpose. The collective liabilities of CANCOM and its third party suppliers are subject to the limitation of liability set forth in this Agreement.
- b) The Client is not authorized to use or access the Cloud Service separately from the Managed Services Offering.
- c) In any case, all contact must be made with CANCOM and not with IBM. The Client shall therefore submit all support requests to CANCOM.

- d) CANCOM will not use or disclose the results arising from Client's use of the Cloud Service that are unique to Client Content or that otherwise identify Client. CANCOM will use Client Content and other information that results from Content to provide, improve, manage, and secure the Cloud Services, and including for research, testing, offering development purposes, and to enable Client to utilize and optimize its use of the Cloud Service. In addition, CANCOM may use, modify, sublicense, and distribute Client Content and other information that results from Client Content for its business purposes provided such Client Content is aggregated with content from other customers and no longer contains any Client identifiers (so that the Content can no longer be attributed to Client without the use of additional information) and, provided, further that any Content subject to applicable privacy regulations will be rendered into a form that no longer constitutes personal data (i.e., removing identifiers so that Content can no longer be attributed to a specific individual). CANCOM may share threat identifiers and other security information embedded in Client personal data for threat detection and protection purposes. The provisions of this section will survive the termination or expiration of the transaction.

4. Final Provisions

- a) Any amendments or additions to this Agreement must be in writing. This shall also apply to any amendment of this clause.
- b) § 9 (1) and (2) of the ECG, § 10 (1) and (2) of the ECG and § 12 of the ECG are excluded by mutual agreement between the contracting parties
- c) If any provision of this Agreement is invalid in whole or in part, the remaining provisions shall remain valid. The invalid provision shall be deemed replaced by a valid provision that most closely approximates the economic purpose of the invalid provision. The same applies in the event of a gap.
- d) This Agreement shall be governed by and construed in accordance with the laws of Austria, excluding its conflict-of-laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement shall be Vienna, Austria.