

# **CANCOM XaaS**

# Terms of Use

Version 1.0 valid from 1.9.2024

CANCOM Austria

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## 1. Declaration of consent

BY ACCEPTING THESE TERMS OF USE OR BY ACCESSING OR USING THE CANCOM XAAS – SERVICES, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THESE TERMS OF USE.

IF YOU ARE USING A SERVICE AS AN EMPLOYEE, AGENT OR CONTRACTOR OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE POWER OR AUTHORITY TO ACT FOR AND BIND SUCH ENTITY TO ACCEPT THESE TERMS OF USE AS A LEGALLY BINDING AGREEMENT.

You hereby acknowledge and agree that it is your sole responsibility to comply with all legal requirements in the countries in which you use the services.

Both CANCOM and its affiliated companies may submit offers to Customers. Written individual agreements in an Offer take precedence over the respective provisions of these Terms of Use with regard to the clause(s) specified therein.

These Terms of Use, including any specific changes in an Offer, are concluded between CANCOM Austria AG and the company placing an order for or accessing the services ("Customer") (hereinafter also referred to collectively as the "Parties" or individually as a "Party").

The effective date of these Terms of Use shall be the earlier of: (i) the Customer's first access to a service; or (ii) the effective date agreed in writing between the Parties. These Terms of Use shall apply both to the Customer's initial Contract Term and to all subsequent Contract Terms.

CANCOM may amend these Terms of Use from time to time. Unless otherwise specified by CANCOM, the changes shall take effect for the Customer upon the extension of the current Contract Term or the conclusion of a new order after the updated version of these Terms of Use has come into force. CANCOM shall inform the Customer of the changes in an appropriate manner by means of notifications via the Customer account, by e-mail or by other means.

## 2. Services

**2.1** The services offered by CANCOM are provided in accordance with these Terms of Use and the applicable laws and regulations. The service documentation, the "CANCOM Service Description", the Data

Processing Agreement ("DPA") and CANCOM's Privacy Policy, as amended from time to time, are integral parts of these Terms of Use.

**2.2** The Customer acknowledges and agrees that this is a service contract and that CANCOM does not provide the Customer with any copies or licenses of any Software as part of the provision of the services described in the CANCOM Service Description. Subject to payment of all applicable Fees, the Customer is granted a limited, revocable, non-exclusive, non-transferable, worldwide right to access and use the services in accordance with the selected services during the term of the agreement in accordance with the provisions of these Terms of Use.

**2.3** The Customer is responsible for ensuring that only Authorized Users access the services offered. In addition, he must ensure and guarantee that these Authorized Users comply with the provisions of these Terms of Use.

**2.4** CANCOM reserves the right to update the services provided at any time. All updates to the services are subject to these Terms of Use. The Customer acknowledges that CANCOM may change the CANCOM Service Description at its own discretion and that such changes supersede the previous versions.

### **3. Terms of use / restriction of use**

**3.1** Software used for the provision of the services and the activities carried out under these Terms of Use is the property of CANCOM or, if applicable, its third-party licensors and is subject to their Intellectual Property rights. The Customer, its Authorized Users and affiliated companies have no rights to the Software. The provision of professional services by CANCOM does not create any new Intellectual Property rights for the Customer. CANCOM reserves all such rights (if any).

**3.2** The Customer is not permitted to (i) copy or otherwise reproduce the services or the Software or make them available to third-parties who are not its Authorized Users, (ii) modify, adapt, create derivative works of, reverse engineer, decompile, disassemble or otherwise interfere with or disrupt the services or their components, (iii) attempt to derive the source code of the Software, (iv) access or use the services in any manner that would infringe the Intellectual Property rights of CANCOM or any third-party, (v) sublicense, sell, rent, lease, transfer, assign, distribute or otherwise misappropriate the Software or the services, (v) sublicense, sell, rent, lease, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit or make available to third-parties the Software or the services, except as permitted under these Terms of Use, (vi) store or transmit content that infringes the Intellectual Property rights of third-parties, or (viii) otherwise use the services in violation of applicable law.

**3.3** The use of the services is subject to the full, unconditional and timely payment of the Fees in accordance with Article 5 of this agreement.

**3.4** The Customer is responsible for compliance with applicable laws and regulations by the Customer and all Authorized Users. In any case, the use of the services is not permitted if it involves unlawful, obscene, offensive, inflammatory, racist, discriminatory or fraudulent content or activities. This includes, in particular, causing damage, impairing or violating the integrity or security or other security measures of a network or system provided by CANCOM. Bypassing filters is also prohibited. Unsolicited, abusive or fraudulent messages, viruses or malicious code may not be sent. The infringement of third-party rights is also prohibited. In the event of a complaint or indication of a violation, use may be suspended and/or terminated until the problem is resolved, unless this is done immediately. The Customer undertakes to indemnify CANCOM and all companies, directors and employees associated with CANCOM against all claims arising from the Customer's violation of applicable laws and regulations.

**3.5** The Customer may only access the services within the scope of the authorizations it has acquired and must ensure that only Authorized Users can access the services. The Customer is responsible for the use of the services by any user who accesses the services with the Customer's access data. The Customer is responsible for maintaining the confidentiality of the login credentials and access data for accessing the services and shall immediately notify CANCOM of any loss, misuse or unauthorized disclosure of such login credentials and/or access data of which the Customer becomes aware. CANCOM and its partners shall not be liable for any damage or loss resulting from the Customer's breach of the aforementioned obligations.

**3.7** The Customer is not authorized to resell or otherwise transfer direct access to the services to third-parties outside its business (unless CANCOM has consented to such transfer in writing) or to combine the services with the Customer's products or solutions to create a commercially viable solution available under the Customer's brand or name.

**3.8** The services offered do not replace any services that must be certified by an authority, a committee or similar due to their area of application, or that must meet special legal requirements (e.g. medical technology law). Although the services may be usable in a medical environment due to their nature, CANCOM expressly points out that the services are not medical products. Should the Customer use the services in a medical environment on a patient or to support a patient, this shall be the sole responsibility of the Customer and CANCOM shall not be liable for any damage caused to the Customer or third-parties as a result of improper use.

#### **4. Use of data**

**4.1** Customer Data is considered Confidential Information to which the Customer is entitled. Within the framework of the Customer relationship, all rights, titles and interests (including all Intellectual Property rights) in this data remain with the Customer. Any changes made to the Customer Data in the course of operating the services shall also remain the property of the Customer. Subject to these Terms of Use, the Customer hereby grants CANCOM and its authorized employees and Affiliates a worldwide, royalty-free, non-exclusive license to process Customer Data to the extent necessary to provide the services. In addition, the Customer agrees to comply with all related obligations arising from these Terms of Use or as required by applicable law.

**4.2** The Customer is solely responsible for ensuring the accuracy and legality of the Customer Data and its adequate protection and backup, unless this is part of the agreed services. The Customer is responsible for obtaining all necessary rights and permissions to enable CANCOM and its authorized third-parties to use, provide, store and process Customer Data in the context of the services. This includes the Customer providing the necessary information and, if required, obtaining the necessary consents before information, including personal or other regulated information, is provided in such Customer Data. The Customer shall indemnify CANCOM and all its Affiliates, directors and employees against all claims arising out of or in connection with false, inaccurate or unlawful Customer Data.

**4.3** With regard to the provision and processing of personal data, in particular Customer Data, the contracting Parties shall comply with the provisions of the CANCOM DPA. CANCOM shall implement appropriate technical and organizational measures to protect personal Customer Data from unauthorized access, processing, loss or disclosure as part of the services provided. The security measures implemented by CANCOM shall ensure that the risk of processing personal Customer Data within the scope of the services is adequately addressed. The Customer is aware that CANCOM will process the personal data in accordance with the applicable Data Protection Laws, these Terms of Use (including the DPA), the CANCOM Privacy Policy and the principles set out therein.

**4.4** Usage Data includes, but is not limited to, logs and all data (other than Customer Data) relating to the operation, support and/or use of the services by the Customer ("Usage Data"). Notwithstanding anything to the contrary in these Terms of Use, CANCOM may collect and use Usage Data to develop, improve, support and operate its products and services.

## **5 Subject matter and Fees**

**5.1** CANCOM offers various Subscription models for the services offered. The Customer is responsible for checking the suitability of the selected Subscription model for the Customer's intended use and the Customer Data. By using the services, the Customer acknowledges that they meet the Customer's requirements.

**5.2** CANCOM's support offering is defined in the CANCOM service level and/or Service Description, which forms an integral part of these Terms of Use. The selected service level is set out in the Offer from CANCOM or, if applicable, from a third-party provider.

**5.3** The Fees are specified in the respective Offer or in the price sheet. The payment obligations cannot be terminated for the period of use, irrespective of use by the Customer. A refund of the Fees paid is not agreed or provided for, unless this is expressly regulated in these Terms of Use. The services are payable from the date on which CANCOM or the third-party provider has carried out the activation or according to the payment dates or terms stipulated in CANCOM's Offer. Unless otherwise agreed in an Offer, all payments for the services are due and payable in full within fourteen (14) days of the invoice date.

**5.4** In the case of Subscription models where billing is based on units consumed, billing shall be per unit consumed ("pay per use"). Unless otherwise agreed in CANCOM's Offer, billing of the units consumed shall take place monthly in arrears. If the Customer is of the opinion that the billed units have not been used, the Customer must inform CANCOM of this in writing within 14 days of receipt of the invoice, stating the reasons, otherwise the billing shall be deemed to have been approved. Under no circumstances shall the Customer be entitled to withhold payments.

**5.5** Should the Customer fail to pay any of the Fees due, CANCOM shall notify the Customer and set a grace period of ten (10) days, after which CANCOM shall be entitled to suspend the provision of and access to the services. The Customer remains liable for payment of the relevant Fees.

**5.6 XaaS – Services from third-party providers.** In all cases in which the services are provided by a third-party provider, CANCOM is obliged under the contracts with these providers to transfer the Customer's payments for the services used to the third-party provider. In this case, the Customer is not entitled to withhold payments for any reason whatsoever. Should the Customer be of the opinion that the services of the third-party provider have not been provided in the agreed quality, or that the services purchased have not been purchased to the extent invoiced, the Customer shall, at CANCOM's discretion, clarify this directly with the third-party provider. If the third-party provider agrees to a reduction or refund of purchased services, CANCOM will forward any credit notes from the manufacturer to the Customer. CANCOM expressly points out that the third-party providers are entitled to suspend the service in accordance with their terms of use if

charges are not paid by the Customer. The Customer is not entitled to assert claims against CANCOM arising from such suspensions of services.

**5.7** CANCOM or, if applicable, its third-party providers, reserve the right to review the extent of use of the services for compliance with the ordered quotas. In the event that the Customer's use of the services exceeds the agreed quotas, CANCOM reserves the right to invoice the excess usage in accordance with the terms and conditions applicable at that time or, if applicable, in accordance with the terms and conditions of its third-party providers. In addition, CANCOM is entitled to discontinue the services with immediate effect in cases where the booked quotas are repeatedly exceeded. In this case, the Customer must pay all Fees for the booked minimum contract period and the booked quota.

**5.8** Unless otherwise agreed in an Offer, the Subscription period shall be automatically extended by twelve (12) months after the initial period of use. Either Party may give written notice of non-renewal at least ninety (90) days prior to the expiry of the current period of use. CANCOM reserves the right to increase the Fees at the beginning of any new or extended term of use. All Fees for an extended term of use shall become due at the time of renewal or in accordance with the agreed payment terms.

**5.9** All Fees and charges payable are exclusive of all taxes and VAT. Each Party is responsible under applicable law for determining and paying all taxes, Fees and charges imposed on that Party in respect of the transaction and payments under these Terms of Use. Any legal transaction Fees shall in any case be borne by the Customer. This also applies if such Fees are only levied in the course of a tax audit at CANCOM.

**5.10** 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.

**5.11** 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 for each invoice. Each invoice is sent individually by e-mail. The electronic invoice is deemed to have been received as soon as it can be retrieved or acknowledged under normal circumstances.

## **6. Warranty**

**6.1** CANCOM warrants that the services hereunder will be provided during the term of the agreement in a professional manner consistent with good industry practice and substantially in accordance with the

CANCOM Service Description. Should CANCOM be unable to correct the non-conformity, the Customer's sole and exclusive remedy shall be to terminate the remainder of the Contract Term and obtain a pro-rata refund of the remaining prepaid Fees for such service.

**6.2** This warranty and the exclusive remedy set out in clause 6.1 of these Terms of Use are the only warranties and remedies granted by CANCOM in favor of the Customer. In any event, the Customer shall not be entitled to reduce or withhold payments. In particular, CANCOM shall in no event be responsible for and expressly excludes any interoperability, data accuracy or fitness for a particular purpose with respect to the services, the Software, the support or any component thereof. Without limiting the foregoing, CANCOM does not warrant that all errors can be corrected or that the operation of the services will be uninterrupted or error-free. In the case of the use of XaaS – Services from third-party providers, CANCOM's responsibility is limited to the warranty promises of the respective third-party providers. Any further warranty by CANCOM is excluded in any case.

**6.3** The warranty does not apply if the error or non-conformity was caused by (i) a breach of these Terms of Use by the Customer, in particular by misuse or modification of the services, (ii) components that are beyond CANCOM's control, (iii) configuration or support by another third-party not commissioned by CANCOM, or (iv) non-compliance by the Customer with the documentation provided by CANCOM.

## **7. LIABILITY**

**7.1** THE AGGREGATE LIABILITY OF CANCOM AND ITS AFFILIATES FOR DIRECT DAMAGES ARISING OUT OF ANY FAILURE TO PERFORM ITS OBLIGATIONS DURING THE TERM OF THESE TERMS OF USE SHALL BE LIMITED TO THE CONSIDERATION ACTUALLY PAID FOR THE PARTICULAR CONTRACT TERM IN WHICH THE LIABILITY CLAIM AROSE, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY. THIS LIMITATION APPLIES TO CANCOM, ITS AFFILIATES, CONTRACTORS, SUBPROCESSORS AND SUPPLIERS COLLECTIVELY.

**7.2** NEITHER CANCOM NOR ITS AFFILIATES SHALL BE LIABLE FOR INDIRECT DAMAGES, BUSINESS INTERRUPTION DAMAGES, LOSS OF DATA AND/OR INFORMATION, FAILURE OF DATA PROCESSING FACILITIES, SOFTWARE DAMAGES, LOSS OF PROFIT, UNREALIZED SAVINGS, LOSS OF INTEREST, CONSEQUENTIAL AND PECUNIARY DAMAGES AND DAMAGES ARISING FROM THIRD-PARTY CLAIMS AGAINST THE CUSTOMER. THE REVERSAL OF THE BURDEN OF PROOF FOR GROSS NEGLIGENCE IS EXCLUDED. CANCOM IS NOT RESPONSIBLE FOR DAMAGES ARISING IN CONNECTION WITH THE CUSTOMER'S INABILITY TO USE THE SERVICES. THIS



LIMITATION APPLIES TO CANCOM, ITS AFFILIATES, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS COLLECTIVELY.

**7.3** CANCOM'S LIABILITY IS NOT EXCLUDED IF THE CAUSE OF LIABILITY ARISES FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR IP CLAIMS.

## **8. Industrial property rights and copyright**

**8.1** If claims for damages are asserted against the Customer in connection with the services provided under these Terms of Use based on an alleged infringement of patents or Intellectual Property rights of third-parties ("Third-Party IP Claims"), CANCOM shall defend the claims at its own expense and indemnify the Customer against all losses, damages and expenses (including reasonable attorneys' Fees) finally awarded to the third-party by a court or agreed in a written settlement with CANCOM, provided that Customer (i) has timely notified CANCOM of the claims asserted, (ii) provides information requested by CANCOM, (iii) allows CANCOM to control and reasonably cooperate in the defense and settlement, including efforts to mitigate damages, and (iv) does not consent to the entry of any judgment or settlement without CANCOM's prior written consent. The Customer's failure to notify CANCOM of a claim under this clause shall not relieve CANCOM of its obligations under this clause. However, CANCOM shall not be liable for any legal costs incurred by the Customer prior to the time of notification or for any damages and/or costs resulting from the Customer's delay or failure to notify CANCOM. Any indemnification obligation under this clause shall not apply if the Customer enters into a settlement or makes an admission in respect of a claim without CANCOM's prior written consent.

**8.2** CANCOM shall have no liability or obligation with respect to any third-party claim if such claim is caused in whole or in part by (i) Customer Data, products or services not provided by CANCOM and/or the use of products and services not originating from CANCOM, (ii) any modification of the services or the Software by the Customer, its Affiliates, its Authorized Users or any other third-party engaged by it, (iii) the use of the services or the Software by the Customer, its Affiliates or its Authorized Users that does not comply with the CANCOM Service Description and these Terms of Use, (iv) the combination, operation or use of the services or the Software with other data, hardware or Software not provided by CANCOM, or (v) a violation of applicable law by the Customer, its Affiliates or its Authorized Users.

**8.3** If the Customer's use of the services results or, in CANCOM's opinion, is likely to result in an IP claim by a third-party, CANCOM may, at its own discretion and expense, either (i) obtain a right of use in favor of the Customer for the purposes of these Terms of Use, (ii) modify or replace the affected services appropriately and without unreasonable impact on the Customer, or (iii) terminate the Subscription and

refund to the Customer the Fees already paid for the corresponding unused portion of the Subscription on a pro rata basis.

**8.4** Clauses 8.1 to 8.3 of these Terms of Use govern CANCOM's entire liability and the Customer's exclusive remedy in respect of claims for infringement of the Intellectual Property rights of third-parties.

**8.5 Indemnification by the Customer.** The Customer shall defend CANCOM and its Affiliates against all third-party claims and indemnify CANCOM and its Affiliates against all damages and costs awarded against CANCOM and its Affiliates or agreed to by the Customer in settlement (including reasonable attorneys' Fees) arising out of such claims to the extent caused by the following: (i) the unauthorized provision, disclosure or processing of Customer Data and Customer personal data by the Customer or any of its Affiliates; or (ii) the violation by the Customer or any of its Affiliates of any laws applicable to the Customer's or any of its Affiliates' business.

## **9 Internet access and data protection**

**9.1** In order to be able to use the specified services, the Customer must have access to the internet. This is not part of the scope of services. In order to use the agreed services, the Customer's end device may be prompted 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 provide the licensor with additional information, features and functions, among other things. The data protection provisions of the manufacturer, which can be accessed on the respective homepage, apply to such a connection and communication.

**9.2** CANCOM undertakes to comply with the applicable data protection provisions of the GDPR and the DSG ("Datenschutzgesetz"). To the extent that 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.

**9.3** If personal data is processed by CANCOM (as processor) on behalf of the Customer (as controller) in the course of the provision of services, this shall constitute commissioned processing within the meaning of Art 28 GDPR. This order processing is carried out exclusively on the basis of a [unilateral declaration of commitment](#) on the processing of personal data by CANCOM in accordance with the legal requirements.

**9.4** In the event that CANCOM is the controller and the Customer is the processor in the context of order processing, 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.

**10. Contract Term / termination of contract**

**10.1** These Terms of Use shall enter into force on the date on which the services are available for use by the Customer ("Ready for Service"). The Customer shall be informed accordingly about the possibility of using the services. Unless otherwise agreed in an Offer, the Customer shall subscribe to the services for the duration of the initial Contract Term, after which the Subscription shall be automatically extended by twelve (12) months in accordance with the provisions of clause 5 of these Terms of Use. Subject to clauses 10.2 and 10.3 of these Terms of Use, the Customer is not entitled to terminate the Subscription during a Contract Term and is responsible for the timely payment of the Fees. Termination of these Terms of Use shall not limit the liability of the Parties for obligations accrued at the time of or prior to termination or for breaches of these Terms of Use.

**10.2** Either Party may terminate these Terms of Use (including all related orders) by written notice to the other Party if the other Party (i) repeatedly breaches material obligations under these Terms of Use (at least twice), (ii) upon the opening of insolvency proceedings against the Customer's assets or upon the rejection of an application for the opening of insolvency proceedings for lack of sufficient assets. This termination shall take effect immediately upon the declaration that the company will not be continued. In the event of the continuation of the company, the dissolution shall only become effective six (6) months after the opening of insolvency proceedings, (iii) if the Customer is in qualified arrears with the payment of the contractual Fees or (iv) if the contractually agreed service becomes uneconomical for CANCOM.

**10.3** CANCOM may suspend the Customer's access to the services if (i) the Customer fails to pay Fees, (ii) the services have been terminated by the Customer in accordance with the terms of these Terms of Use, or (iii) the Customer or its Authorized Users breach clauses 3.2 and 3.4 of these Terms of Use. If the cause of the suspension can be reasonably remedied, CANCOM will advise what action the Customer must take to restore the services. If the Customer does not take these measures within a reasonable period of time, CANCOM may terminate the services. In such cases, however, the Customer is obliged to pay the Fee for a Contract Term that has not yet expired.

**10.4** CANCOM may suspend the Customer's access to the services if this is necessary to prevent or remedy malware, a security incident or other damage to the Customer, CANCOM or other Customers of CANCOM. CANCOM will inform the Customer of any such suspension. CANCOM will endeavor to limit the interruption as far as possible and will immediately restore the availability of the services as soon as the problems that led to the interruption have been resolved.

**10.5** Upon termination or expiration of these Terms of Use for any reason, CANCOM shall make Customer Data available for export for thirty (30) days from the effective date of termination or expiration of these Terms of Use ("Export Period"). For Customer Data that is retained by CANCOM and is exportable, and provided that the Customer has paid all applicable Fees, the Customer may contact CANCOM via [kd-center@cancom.com](mailto:kd-center@cancom.com) within the Export Period and have CANCOM export Customer Data for a Fee to be agreed. At the end of the export period, CANCOM will delete the available Customer Data unless further processing is necessary to comply with CANCOM's legal obligations, maintain accurate financial and other records, resolve disputes and enforce these Terms of Use. Once deleted, Customer Data cannot be restored.

## 11. Definitions

"*Offer*" - is a document made available to the Customer by CANCOM which refers to these Terms of Use and in which the ordered services, the corresponding Fees, the Contract Term and/or other relevant service conditions are listed.

"*Authorized User(s)*" - means any employee, consultant, contractor or agent of the Customer who is authorized by the Customer to use the services in accordance with the selected Subscription.

"*Data Protection Law(s)*" - means all applicable laws and regulations for the protection of personal data, primarily the General Data Protection Regulation (GDPR).

"*Privacy Policy*" - means the CANCOM Privacy Policy as amended from time to time.

"*Data Breach*" - means an actual or suspected breach of data security that results in the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the personal data transmitted, stored or otherwise processed by CANCOM or an authorized third-party.

"*Third-Party Services*" - are those XaaS – Services which are not provided by CANCOM but by third-party companies and which are resold by CANCOM as a reseller to the Customer or a contract with the respective service provider is arranged for the Customer by CANCOM.

"*Fee*" - means all Fees payable by the Customer for the services.

"*Intellectual Property (IP)*" - means and includes, to the extent recognized by applicable law, rights in Software, including, without limitation, source code and all related patents, patent applications, copyrights, trademarks, service marks, trade names, internet domain names, e-mail address names, trade secrets, database rights, Customer lists, design rights, know-how, techniques, processes, methods, inventions (whether or not patentable), concepts, discoveries, improvements, chip designs, proprietary information, technical information, specifications and all other copyrights and intellectual and industrial property rights

and other similar rights, whether patentable or not), concepts, discoveries, improvements, chip designs, proprietary information, technical information, specifications and all other copyrights and intellectual and industrial property rights and other equivalent or similar rights existing anywhere in the world, whether registered or not, including all forms of applications for any of the foregoing rights.

"*Customer Data*" - means any information or data (including personal data) of the Customer and its Authorized Users, e.g. name, telephone, address, email address, user IDs, that CANCOM, its affiliates and approved third-parties process for the purpose of providing the services.

"*Ready for Service*" - means the date on which CANCOM has made the necessary configurations so that the Customer can use the services.

"*Software*" - means any software used for the provision of the services under these Terms of Use and includes in particular the source code, the database elements and the accompanying documentation (operating manuals, installation and administration instructions, technical literature and other documentation in paper and/or electronic form).

"*Subscription*" - refers to the various types of subscription services that CANCOM offers the Customer as part of the XaaS-based services.

"*Affiliate(s)*" - means, with respect to an entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity (but only for so long as such control exists), where "control" means the right to exercise, directly or indirectly, more than 50% of the voting power attributable to the management of an entity and/or the possession of the power, directly or indirectly, to direct or cause the direction of the management or policies of such entity.

"*Contract Term*" - means the initial contract term and any subsequent renewal term of twelve (12) months, unless otherwise agreed in an Offer.

"*Confidential Information*" - means any information disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party"), regardless of its form, format or medium, that is marked as confidential or that a reasonable person should understand to be confidential given the nature of the information and the circumstances of the disclosure. Confidential Information does not include information that (i) has been disclosed to a person subject to a professional duty of confidentiality, such as (ii) was publicly known and generally available prior to the time of disclosure by the Disclosing Party or was publicly known and generally available through no act or omission of the Receiving Party, (iii) was lawfully obtained by the Receiving Party from a third-party without breach by the Receiving Party of its confidentiality obligations, (iv) was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, or (v) is subject to mandatory disclosure under applicable law.

"XaaS - Services" - are all "as a Service" services provided directly by CANCOM itself or by a third-party provider. This includes (but is not limited to) infrastructure, platform and Software as a service.

## **12 General/final provisions**

**12.1** The contractual relationship shall be governed by the rules of a mutual business-related transaction, even if one of the Parties is not an entrepreneur. The Customer must inform CANCOM prior to the conclusion of the contract if the service ordered is not 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 Consumer Protection Act (Konsumentenschutzgesetz).

**12.2** Ancillary 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.

**12.3** The contracting Parties shall 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.

**12.4** If individual provisions of the concluded contract and these Terms of Use should 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.

**12.5** Neither Party may assign its rights or obligations under these Terms of Use without the prior written consent of the other Party (which consent shall not be unreasonably withheld). However, either Party may assign these Terms of Use to a successor to all or substantially all of that Party's business, whether by merger, acquisition, corporate reorganization or sale of substantially all of its assets, without the consent of the other Party. These Terms of Use shall be binding upon and inure to the benefit of the Parties' successors in interest. The assignment of CANCOM's rights to receive payments or the assignment by CANCOM in connection with the sale of that part of CANCOM's business comprising the services shall not be limited. CANCOM is also entitled to transfer the contracts concluded under these terms and conditions to affiliated companies if CANCOM intends to transfer the contracts in the course of organizational changes.

**12.6 Force Majeure.** CANCOM shall not be liable for any delay or failure to perform any obligation under these Terms of Use if the delay or failure results from causes beyond the reasonable control of that Party, including, but not limited to, acts of God, acts of government, acts of terrorism or civil disturbance, internet outages or acts of third-parties beyond CANCOM's control, including, but not limited to, denial of service

attacks ("Force Majeure Event"). Should a Force Majeure Event continue for a period of thirty (30) consecutive days, the other Party may terminate these Terms of Use by written notice to the non-performing Party. If CANCOM is the party affected by Force Majeure and the Customer terminates these Terms of Use, CANCOM shall refund to the Customer the Fees paid by the Customer pro rata from the date on which the Force Majeure Event commenced.

**12.8** The services or components of the services may be subject to export control and economic sanctions laws, rules and regulations ("Export Laws"). The Customer agrees to comply with all Export Laws insofar as they relate to access to and use of the services by the Customer and Authorized Users. Customer shall not access or use the services if Customer is located in a country where the provision of the services is prohibited by applicable law, including without limitation a country or territory subject to trade sanctions, and Customer shall not provide access to the services to any government, entity or individual located in such a country. Customer represents, warrants and covenants that (i) Customer is not on any government list of persons or entities prohibited from receiving exports or doing business with persons, nor is it owned or controlled by any such Party, (ii) Customer is not a national of any such country, located in or incorporated in any such country, (iii) Customer will not permit Authorized Users to use the services in violation of any Export Laws, and (iv) no Customer Data created or transferred by Customer is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Laws.

### **13. Law and place of jurisdiction**

**13.1** 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.

**13.2** 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.