General Terms and Conditions for Software and Maintenance

§ 1   Subject-Matter of the General Terms and Conditions for Software and Maintenance

1. Frequentis AG or one of its group companies (hereinafter "Frequentis") has developed the modularly designed standard software solution 3020 LifeX, the Voice Recording System (hereinafter "DIVOS") and the Unified Radio Gateway (hereinafter "URG") (hereinafter the "Software").

2. The General Terms and Conditions for Software and Maintenance define the rights granted to customers (hereinafter the "Customer") by Frequentis to pass the usage rights for the Software solely to the End-Customer, as well as the basic terms and conditions for the Total Scope, if any, as defined in a Delivery Agreement (see following § 1 clause 3).

3. The details of the individual Customer project, including additional terms and conditions, are defined in the Delivery Agreement to be concluded between the Customer and Frequentis. The Software modules and maintenance services available on the market are described in the respective product and maintenance catalogue. In the Delivery Agreement, the Software and the number of Cores or Clients or Adapters for which Customer acquires the right to pass to the End-Customer are defined, as well as supporting services, maintenance services to be provided and additional equipment to be delivered, if any.

4. Proposal/Offer and contract documents as well as blueprints, test and demo versions or programs and similar documents are and remain the intellectual property of Frequentis or its licensers and may neither be copied nor disclosed to third parties. If no contract is concluded or a contract is terminated, they must in no event be used by Customer and shall be, upon Frequentis' written request, returned immediately or otherwise deleted.

5. The provisions of the Delivery Agreement prevail over any conflicting provisions of the present General Terms and Conditions for Software and Maintenance.

6. For the purpose of these General Terms and Conditions for Software and Maintenance, the following words and expressions shall have the meaning assigned hereafter in capital letters:

    "Adapter" means translators within the Core that are used for interfacing and integration of subsystems into the control room solution (Frequentis solution) and to external systems;

    "Client" means a hardware device that connects to and uses the resources of the Core via the installed Software;

    "Concurrent User" means the maximum number of Clients, which are authorised to access the Software concurrently;

    "Core" means the processing unit on which the Software is installed that receives instructions and performs calculations, or actions, based on those instructions.

§ 2   Scope of Delivery

1. Frequentis provides the Software in the form of an executable machine program plus user documentation in the most recent version, as described in the Delivery Agreement. Frequentis owes no additional functionality beyond this. Descriptions in the respective product and maintenance catalogue and the user documentation do not constitute any warranties or other guarantees.

2. If not otherwise agreed in the Delivery Agreement, the provision of the Software and the user documentation shall be made by remote data transmission.

3. If not otherwise agreed in the Delivery Agreement, installation of the Software, data migration, integration, briefing and training are not included in the Total Scope. Such services can be offered to the Customer according to the respective current price list of Frequentis upon Customer's request.

§ 3   Rights to the Software

1. All rights to the Software and all other intellectual properties delivered by Frequentis shall remain with Frequentis or it' licensers. This also applies to Software or other intellectual property delivered by Frequentis that has been developed or adapted according to specifications and/or with the participation of the Customer and/or developed individually.

2. The rights to any third party or open source software included in the Software and in other intellectual property delivered by Frequentis rest with the respective third parties and are governed by the respective license terms as defined in the Delivery Agreement.

§ 4   Granting of Usage Rights

1. Subject to receipt of full payment, Frequentis shall grant to the End-Customer a non-exclusive, non-transferable, perpetual right to use the Software and other provided intellectual property, and the End-Customer accepts this right. The End-Customer

acquires the expressly agreed non-exclusive usage rights. The Customer is obliged to include the End-Customer Usage Terms and Conditions for Software as contained in the Delivery Agreement in its contract with the End-Customer and which have to be accepted by the End-Customer.

2. The End-Customer may use the Software at most for the number of Cores/Clients/Adapters specified in the Delivery Agreement and the End-Customer Usage Terms and Conditions for Software, even if further use was technically possible. If not otherwise agreed in the Delivery Agreement, the Software will be installed via remote connection, provided by the Customer. For the duration of the Agreement and 3 (three) years thereafter, the Customer, respectively the End-Customer grants Frequentis the right to check the actual extent of use by measurement and/or on-site audits. To this end, Frequentis is also entitled to enter the premises of the Customer respectively the End-Customer or its service providers. The Customer is obliged to arrange for the granting of such permission by the End-Customer respectively the service provider. Frequentis may execute its right to measure and/or audit on its own or through an external auditor. If and insofar as the actual extent of use differs from what has been agreed in the Delivery Agreement, Frequentis is entitled to bill the expenses incurred by it as a result of the measurement or the on-site audit, respectively, as well as the price difference according to Frequentis' respective current price list with a surcharge of 5 (five) % to the Customer respectively the End-Customer, and the amount billed becomes due immediately. Whereby, a grace amount of exceeding the concurrent use of Clients in the amount of maximum 5 (five) % of the Concurrent User for a period of maximum 148 (one-hundred-forty-eight) hours in total within a contract year, is granted.

3. If not otherwise defined in the Delivery Agreement, the Software shall be used productively in one (1) installation only. An installation is the sum of all components that interoperate with or access (directly or indirectly) a set of Clients, Adapters and Cores.

4. The Software may be used by the End-Customer solely for the purpose of handling the End-Customer's internal business transactions. Data centre operation is not allowed. It is deemed a data centre operation if the End-Customer grants any third party the right to use the Software (including i.a. the right to run, operate and host), for the benefit of the End-Customer or third parties, by any technical means whatsoever. The usage right does, in particular, not include the right to, or permit third parties, wholly or in part, copy the Software beyond the minimum rights provided for by Austrian copyright law ("Urheberrechtsgesetz") to reproduce, disassemble, reverse engineer, modify or otherwise exploit it. The Customer is authorized to make 1 (one) copy for backup, that may be used only if the original is unusable, and 1 (one) additional copy for archiving. The End-Customer is obliged to keep on each copy any copyright notices.

5. The End-Customer may use the Software only in the infrastructure requirements as stipulated in the Delivery Agreement, respectively the End-Customer Usage Terms and Conditions for Software.

6. In the event of hardware failure or otherwise mandatory hardware replacement, the Software may be used on new hardware. Any necessary expansion of the extent of the use of the Software is subject to payment of an increased remuneration according to Frequentis' respective current price list.

7. The Software may include third party and/or open source components. The respective usage rights are governed solely by the respective terms and conditions as defined in the Delivery Agreement, respectively in the End-Customer Usage Terms and Conditions for Software. A list of third party and open source components, including the relevant terms and conditions of usage, can be found in the respective product and maintenance catalogue and the user documentation. The End-Customer is obliged to keep any copyright notices.

§ 5   Maintenance Services

1. The respective product and maintenance catalogue comprises the general maintenance offer of Frequentis. The maintenance services agreed in the individual customer project are defined in the Delivery Agreement and are to be provided by Frequentis for the current program version (Release) and the 2 (two) preceding program versions, provided that these have been delivered during the last 48 months prior to provision of the relevant maintenance service. The program version is indicated by the digit after the decimal point. Customer's respectively End-Customer's infrastructure requirements are defined in the Delivery Agreement respectively in the End-Customer Usage Terms and Conditions for Software, whose proper provision, maintenance and operation are prerequisites for the provision of maintenance services by Frequentis. If no separate price has been agreed in the Delivery Agreement, Frequentis shall provide the maintenance services in accordance with the price list applicable at the time of invoicing. If not otherwise agreed in the Delivery Agreement, Frequentis is entitled to adjust any agreed maintenance fee annually by the extent of the price increase in accordance with the salary increase under the collective bargaining agreement ("Kollektivvertrag Metallgewerbe Angestellte") plus 5 (five) %.

2. Any maintenance services not explicitly agreed in the Delivery Agreement shall not be owed by Frequentis. The maintenance services do, in particular, not include any of the following, if not otherwise agreed in the Delivery Agreement:

   • Services on-site, provision of new program versions or patches, briefings, training, data migration; configuration activities, tests;

   • expenditures resulting from use of the Software that is improper or contrary to the Delivery Agreement, including use of the Software other than in the infrastructure requirements as stipulated in the Delivery Agreement (together with any

expenditures incurred by restoration of compatibility between the Software and the infrastructure that may be necessary due to the maintenance of the Software and/or the infrastructure environment), from a infrastructure environment which is not state of the art, or incurred during maintenance shutdowns, or from external influences or Force Majeure, or that result from any other causes outside the control or fault of Frequentis;

- delivery of new functionalities of the Software.

3. If Frequentis provides such services anyway, it is entitled to bill these monthly at the hourly rates or prices according to the price list effective at the time of service delivery.

4. If a contract for the provision of maintenance services is concluded after delivery of the Software, the Customer shall be required to provide the additional payment of those maintenance fees that would have accrued in case of simultaneous conclusion of the contract for the granting of usage rights and the maintenance contract in order to achieve the current program status.

5. The maintenance contract is legally independent from the contract granting usage rights. If not otherwise agreed in the Delivery Agreement, the maintenance contract, becomes effective as indicated in the Delivery Agreement for the minimum of 1 (one) year.

§ 6 Equipment to be delivered

1. If not otherwise agreed in the Delivery Agreement, any equipment within in the Total Scope shall be delivered by Frequentis "Ex Works" according to Incoterms 2010.

§ 7 Terms of Payment

1. If not otherwise agreed in the Delivery Agreement, the prices are calculated according to Frequentis' price list effective at the time of invoicing.

2. If not otherwise agreed in the Delivery Agreement, the following payment plan shall apply:

the price for granting the usage rights for the Software will be billed at the time of delivery; the fixed service fees (like the maintenance fee) will be charged annually in advance. Maintenance services based on time and material, as well as any other supporting services will be billed monthly at the beginning of the month following the billable event. Any equipment delivered will be billed at the latest at the time of physical handover.

3. Payments are due within 14 (fourteen) days of the invoice date. No discounts will be granted. From 15 (fifteen) days after the due date, Frequentis will bill interest at the rate of 8 (eight) % above the base lending rate of the European Central Bank. The right to claim further damage for delay is reserved.

4. The Customer may offset due amounts only against undisputed or legally binding counter-claims. The Customer is not entitled to assign its claims to any third parties.

5. All prices are quoted net in EURO, excl. VAT for delivery according to the INCOTERMS specified in the Delivery Agreement. All prices are quoted net and any taxes, levies, fees, royalties, duties (including but not limited to customs clearance fees as well as any withholding taxes) or other charges that may be imposed outside of Austria are not included in the price and shall be paid by the Customer additionally.

§ 8 Warranty for Software

1. If not otherwise agreed in the Delivery Agreement the warranty period for the Software licensed starts with delivery. Frequentis warrants for a period of 6 (six) months from delivery that the Software will in all material respects be functional as described in the user documentation, and that the services will be provided in accordance with the industry standard.

2. However, Frequentis does not warrant that the Software will run without errors and interruptions, as this cannot be warranted even with all due diligence.

3. Upon receipt of written notification, Frequentis will support the Customer in the identification of the error and its cause. If the error cannot be demonstrably attributed to Frequentis, under its warranty obligations, Frequentis shall bill the Customer for these services based on time and material.

4. The burden of proof for the existence of a defect at the time of delivery lies with the Customer. Frequentis will correct reproducible defects within a reasonable period. The corrective action shall be taken by Frequentis to either repair, provide a new program

version, or indicate reasonable methods to avoid the effects of the deficiency; the most appropriate action shall be at the sole discretion of Frequentis.

5. The warranty does not comprise the removal of errors caused by the improper use (including but not limited to the unauthorised use), changes and other interference in the Software, operating errors, accident, inadequate infrastructure environment, a infrastructure environment which deviates from the agreed specifications, insufficient maintenance by the Customer or a third party, or caused by a product which is not a Frequentis responsibility.

6. The warranty is exhaustively regulated herein and replaces all other warranties, whether by law, explicit or implied, including but not limited to the fitness for a particular purpose. Support of new versions and/or new modules of the Software (including warranty support) is always subject to the conclusion of the relevant maintenance agreement.

§ 9 Liability

1. Frequentis shall be held liable in case of any injury to persons, as well as of intent or serious cases of gross negligence ("krass grobe Fahrlässigkeit"), without contractual limitation.

2. Liability is excluded in all other cases of gross negligence, in case of slight negligence as well as for indirect damages, damages to third parties, consequential damages, losses of revenue or profits as well as losses of or damage to data.

3. In all other cases, the aggregate liability is limited to a total of 5 (five) % of the remuneration for the granting of usage rights to the supplied Software.

§ 10 Cooperation Obligations of Customer

1. All performances and/or prerequisites that are required for proper performance by Frequentis and are not explicitly contractually owed by Frequentis according to the Delivery Agreement, shall constitute contractual cooperation obligations of the Customer, free of charge to Frequentis. These cooperation obligations include, without being limited to, the following:

   • Provision, maintenance and operation of a proper infrastructure environment for the Software (e.g. hardware, operating system, other external components including agreed configuration) together with proper IT security procedures, all according to the tested and released specifications of the Software according to the Release as defined in the Delivery Agreement for the entire duration of the Delivery Agreement;

   • provision of the documents, information and other data necessary in adequate and sufficient quantity and quality and in due time, necessary for Frequentis to fulfil its contractual obligations;

   • granting of direct access to the equipment and the Software delivered by Frequentis via remote data transmission or otherwise as requested by Frequentis. This applies, inter alia, for the purpose of measuring or on-site auditing, respectively;

   • regular, at least daily data backup and error diagnosis, regular review of the results, etc.;

   • proper maintenance of the Software by sufficiently trained staff certified by Frequentis. Such certification is to be refreshed after 2 (two) years after issuance of the most recent certificate. The associated costs shall be borne by the Customer. Any retraining considered necessary by Frequentis shall be taken by the Customer's employees to be certified, and Frequentis shall bill the costs of such training according to its price list effective at the time of service delivery;

   • proper provision and maintenance of third party components which are not part of Frequentis' responsibility, Customer shall not be released from his obligation in case Frequentis has given a specification for such third party components;

   • provision of any third-party and open source software required for the use of the Total Scope, together with the conclusion and maintenance of, as well as compliance with, the contracts necessary for the required usage rights, maintenance and operation.

2. In case of Customer's failure to properly fulfil the cooperation obligations, or of any other obstruction of Frequentis to execute their contractual obligations not within Frequentis' exclusive sphere, performance deadlines shall be deemed extended by the duration of the obstruction plus a reasonable restarting period after the end of the obstruction. Frequentis has the right to bill to the Customer all additional expenses incurred which are caused by the Customer not fulfilling their responsibilities in time or in proper form. If Frequentis elects to provide the performances incumbent to the Customer or necessary to come over another obstruction by itself, Frequentis shall be entitled to bill the resulting additional costs to the Customer.

§ 11 Infringement of IPR

1. Frequentis shall fully indemnify the Customer respectively the End-Customer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of letters patent, design, copyright or other intellectual property rights by the contractually agreed use or possession of the Software and all other intellectual properties delivered by Frequentis under the Delivery Agreement, provided that the Customer respectively the End-Customer i) promptly notifies Frequentis in writing of any infringement or alleged infringement of which he has notice; ii) does not make any admission without Frequentis' written consent; and iii) allows Frequentis upon its request and at its expense to conduct and/or settle all negotiations and litigation, giving Frequentis all reasonable assistance.

2. This indemnity does not apply where infringement or alleged infringement arises due to the use of the Software or other delivered intellectual properties in a way or with equipment or material not approved or provided by Frequentis or due to a modification of or alteration to the Software, respectively the delivered other intellectual properties carried out without Frequentis' prior written consent.

3. If at any time any allegation or infringement of letters patent, registered design, copyright or other intellectual property rights is made in respect of any parts provided or for modifications or alteration made to the Software or other intellectual properties delivered by Frequentis shall at its own expense and at its discretion

    a) either modify or replace such infringing portions of the Software or other intellectual properties delivered by Frequentis to make them non-infringing, without detracting from the overall performance of the System; or

    b) procure to the Customer respectively the End-Customer the right to continue using the Software or other intellectual properties delivered by Frequentis containing such infringing portions.

§ 12 Force Majeure

1. For the purposes of these General Terms and Conditions for Software and Maintenance, Force Majeure means all events beyond the control of Frequentis including but not limited to war, revolutions, serious destruction, explosion, fire, floods, severe weather, shortage of water, earthquake, epidemics, quarantine restrictions, general boycott of systems to be exported or produced by Frequentis, strikes, lockouts, acts of government in either its sovereign or contractual capacity, security risks for Frequentis personnel at Customer's country, embargoes of any kind, obtaining a necessary export licenses from relevant authority, legal proceedings which hinder, prevent or impede the performance by Frequentis hereto of any obligations herein.

2. Frequentis shall not be held liable for the consequences of any failure to perform/late performance any obligation contractually agreed under the Delivery Agreement, if such non-performance/late performance is caused by Force Majeure as defined herein.

3. Where there has been a failure/late performance caused by Force Majeure, the said failure/late performance shall not be considered as a non-compliance with any term or condition of the Delivery Agreement. The time of performance of the obligations, which could not be performed due to Force Majeure, shall be extended adequately inclusive reasonable ramp-up time.

4. Frequentis shall inform the Customer within a reasonable time of the occurrence of a Force Majeure event and shall keep him informed of the developments of such event.

§ 13 Miscellaneous Provisions

1. Frequentis and the Customer may at any time during the term of the Delivery Agreement request in writing a change to the Total Scope ("Change Request"). Upon receipt of a Change Request by the Customer, Frequentis shall, within reasonable time, state in writing to the Customer the effect such change will have on the implementation of the Total Scope, and/or the prices and/or the time schedule, by providing the Customer with a corresponding offer, which shall become effective upon written acceptance by the Customer.

2. Any amendments and supplements to the Delivery Agreement must be in writing. This also applies to a waiver of the requirement of written form. In case of disagreement, primarily an amicable solution is to be sought.

3. Insofar as provisions in these General Terms and Conditions for Software and Maintenance are in their nature in force for an unlimited amount of time, they shall survive the duration of the Delivery Agreement, including in particular clause 4.2. This also applies for all successors, authorised person or assignees.

4. The voidance or legal unenforceability in whole or part, of any provision of the Delivery Agreement shall not affect the validity or enforceability of the remainder of the Delivery Agreement. Should a provision be void, the Frequentis and the Customer agree to replace it with one coming closest to its original intent.

5. The contractual relationship as well as any rights or obligations related thereto is governed by and construed in accordance with Austrian law excluding all non-binding conflict of law provisions and the CISG (United Nations Convention on Contracts for the International Sale of Goods). Factual and territorial jurisdiction is with the Commercial Court of Vienna.

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