Agreement on IBM Commercial Terms for Services

This Agreement on IBM Commercial Terms for Services (called the “Commercial Terms”) governs transactions by which Customer acquires Services from IBM Ceska republika, spol. s r.o. (“IBM”). These Commercial Terms, including its applicable Attachments and Transaction Documents, are the complete agreement (“Agreement”).

1. Attachments and Transaction Documents
   Additional terms for Services are in documents called “Attachments” and “Transaction Documents” provided by IBM. In general, Attachments contain terms that may apply to more than one Services transaction, while Transaction Documents (such as an order, supplement, schedule, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

   If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

2. Definitions
   - **Enterprise** – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term “Enterprise” applies only to the portion of the Enterprise located in the Czech Republic.
   - **Materials** – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The term “Materials” does not include Programs, Machine Code, or other items available under their own license terms or agreements.
   - **Service** – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

3. Acceptance of Terms
   Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Service, or allowing others to do so, or iii) making any payment for Service.

   A Service becomes subject to this Agreement when IBM accepts Customer’s order by i) sending Customer a Transaction Document, or ii) providing the Service.

   Any Attachment or Transaction Document will be signed by both parties if requested by either party.

4. Charges and Payment
   4.1 Charges
      A Transaction Document specifies the amount payable for Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

      Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

      If a Transaction Document provides an estimated total charge for time and materials, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended.

   4.2 Changes to Charges
      From time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

      Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer at least three months’ written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice, unless Customer terminates the Agreement by that time.

   4.3 Payment
      Amounts are due and payable upon receipt of invoice. Customer agrees to pay accordingly, including any late payment charges. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.
If payment is not received within 30 days from the date of invoice (or in the case of quarterly advance billing of recurring charges, within 60 days from the date of invoice), Customer may be subject to late payment charges. The late payment charges will be calculated in accordance with local law.

4.4 Taxes

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM’s net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property taxes for each Product from the date IBM ships it to Customer. Additional taxes and tax-related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

5. Changes to the Agreement Terms

In order to maintain flexibility in business relationship between Parties, IBM may change the terms of this Agreement by providing Customer at least three months’ written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above.

Otherwise, for a change to be valid, both parties must sign it.

6. IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order IBM Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM.

IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

7. Personnel

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

8. Materials Ownership and License

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as “Type I Materials”. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM’s or its suppliers’ works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each Party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.
9. **Warranty for IBM Services**

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

**THESE WARRANTIES ARE CUSTOMER’S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT. THE PARTIES HEREBY EXCLUDE ANY LIABILITY OF IBM FOR DEFECTS BEYOND THE AGREED WARRANTIES.**

**Items Not Covered by Warranty**

IBM does not warrant uninterrupted or error-free operation of Service or that IBM will correct all defects.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer’s request), and non-IBM Services without warranty of any kind or liability for defects. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

10. **Automatic Service Renewal**

Renewable Services renew automatically for a same length contract period unless either Party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

11. **Termination and Withdrawal of a Service**

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, ii) reimbursable expenses IBM incurs up to and including the date of Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment charges and termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on at least three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees of the Parties.

12. **Customer Resources**

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM’s performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding any such data or database, including any confidentiality and security obligations, are governed by the provisions of the Attachments and Transaction Documents applicable to the particular Services transaction (which prevail over the terms of any separate confidentiality agreements), and subject to the Limitation of Liability and other terms in this Agreement.

13. **Intellectual Property Protection**

13.1 **Third Party Claims**

If a third party claims against Customer that a Material IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved by IBM, provided that Customer:
a. promptly notifies IBM in writing of the claim; and
b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations.

13.2 Remedies
If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM’s discretion, either to (i) enable Customer to continue to use the Material, (ii) modify it, or (iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM’s written request, Customer agrees to promptly return the Material to IBM and discontinue its use. IBM will then give Customer a credit equal to the amount Customer paid IBM for the creation of the Materials.

13.3 Claims for Which IBM is Not Responsible
IBM has no obligation regarding any claim based on any of the following:

a. anything provided by Customer or a third party on Customer’s behalf that is incorporated into a Material or IBM’s compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer’s behalf;

b. use of Material other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Material, to the extent a claim could have been avoided by using the current release or version;

c. any modification of a Material made by Customer or a third party on Customer’s behalf or the combination, operation, or use of a Material with any other product, hardware device, program, data, apparatus, method, or process;

d. the distribution, operation or use of a Material outside Customer’s Enterprise; or

d. a non-IBM Material or other non-IBM product.

This Intellectual Property Protection section states IBM’s entire obligation and Customer’s exclusive remedy regarding any third party intellectual property claims.

14. Limitation of Liability

14.1 Items for Which IBM May Be Liable
Circumstances may arise where, because of a default by IBM in the performance of its obligations under this Agreement, Customer is entitled to recover damages from IBM. In such event, IBM is liable only for detritment caused by IBM under this Agreement, which in the aggregate will not exceed the amount of any direct damage, to the extent actually suffered by Customer as an immediate and direct consequence of the default, up to the greater of the equivalent of € 500,000 (five hundred thousand euro) in local currency converted according to the exchange rate published by the Czech National Bank on the business day preceding the date of payment of the relevant invoice by the customer or, if none, the date of IBM’s breach, or the charges (if recurring, 12 months’ charges apply) for the Product or Service in relation to which the relevant claim for damages has been made. For purposes of this item, the term "Product" also includes Materials. This limit also applies to any of IBM’s subcontractors and Program developers.

Concerning all conditions related to the conclusion of this Agreement, both contractual parties agree that the sum set forth in paragraph above constitutes the limit of damages for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

a. payments referred to in the Intellectual Property Protection section above; and
b. bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable;
c. detriment caused intentionally or due to gross negligence.

14.2 Items for Which IBM Is Not Liable
Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

a. loss of, or damage to, data;
b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
c. lost profits, business, revenue, goodwill, or anticipated savings.

These limitations of liability under this Limitation of Liability article of this Agreement shall apply to the maximum possible extent permitted by mandatory provisions of applicable laws.
15. **General Principles of Relationship**

15.1 **Notices and Communications**

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with business relationship between parties arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a “user ID”) contained in an electronic document is sufficient to verify the sender’s identity and the document’s authenticity.

15.2 **Assignment and Resale**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. IBM is also permitted to assign its rights to payments without obtaining Customer’s consent. IBM is further permitted to assign the Agreement to a third party if such an assignment is effected as part of divestiture of a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM’s prior written consent. Any attempt to do so is void.

15.3 **Compliance with Laws**

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Notwithstanding anything in this Agreement to the contrary, neither party is obligated to take any action that would violate law applicable to that party.

Each party will comply with applicable export and import laws, regulations and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

15.4 **Dispute Resolution**

Each party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. **THE PARTIES AGREE THAT SHORTER LIMITATION PERIODS WILL APPLY TO ANY AND ALL RIGHTS UNDER THE AGREEMENT, WHICH WILL BE TWO YEARS FROM THE COMMENCEMENT OF THE RELEVANT LIMITATION PERIOD. THE AGREEMENT ON SHORTER LIMITATION PERIODS WITH RESPECT TO THE RIGHTS OF IBM MAY NOT BE SEPARATED FROM AN AGREEMENT ON SHORTER LIMITATION PERIODS WITH RESPECT TO THE RIGHTS OF THE CUSTOMER.**

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

16. **Other Principles of Relationship between Parties**

a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.

b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.

c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.

d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.

e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this
processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.

f. No right or cause of action for any third party is created by this Agreement or any transaction under it nor is IBM responsible for any third party claims against Customer, except 1) as described in the Intellectual Property Protection section above, ii) as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party, or iii) as provided by mandatory provisions of applicable laws.

g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer’s decision to implement any recommendation concerning Customer’s business practices and operations.

h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.

i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.

j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer’s facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer’s delay in providing such access or performing other Customer responsibilities under this Agreement.

k. Pursuant to Section 1801 of Act No. 89/2012 Coll., the Civil Code, as amended (the “Civil Code”), Customer and IBM agree that Section 1799 and Section 1800 of the Civil Code shall not apply to the arrangements governed by the Agreement.

l. Customer accepts the risk of a change of circumstances pursuant to Section 1765 of the Civil Code.

m. The parties exclude application of Section 1740 (3) and Section 1751 (2) of the Civil Code, which provide that the Agreement is concluded even in the absence of full compatibility of the parties’ expression of intent.

17. Agreement Termination

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party’s obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties’ respective successors and assignees.

18. Geographic Scope and Governing Law

The rights, duties, and obligations of each party are valid only in the Czech Republic except that all licenses, if any, are valid as specifically granted.

Both parties agree to the application of the laws of the Czech Republic to govern, interpret, and enforce all of Customer’s and IBM’s respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

All rights, duties, and obligations under this Agreement are subject to the courts of Czech Republic.
This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Customer hereby acknowledges and confirms its awareness, understanding, and express acceptance of the following important provisions in these Commercial Terms: (i) the right of IBM to demand return of a Material that infringes a patent or copyright (clause 13.2), (ii) limitation of Customer’s entitlement to damages (clause 14), (iii) exclusion of applicability of provisions on adhesion contracts (clause 16), (iv) acceptance of the risk of a change in circumstances (clause 16l), (v) exclusion of rules permitting the execution of a contract in cases where the parties fail to reach full consensus (clause 16m), (vi) binding nature of export and import regulations (clause 15.3), (vii) shorter limitation periods (clause 15.4), (viii) limitation and disclaimer of liability for defects (clause 9), and (ix) automatic service renewal (clause 10).

Agreed to:

IBM Česká republika, spol. s r.o.

By____________________________________
Authorized signature
Title:
Name (type or print):
Title:
Date:
Customer address:
V Parku 2294/4
148 00 Praha 4
IC: 14890992
Registered in the Company Registry at the Municipal Court in Prague, Section C, insert 692