

**Agreement for Services
(Excluding Maintenance)**

Customer Name:

Customer Address:

Customer Number:

Agreement Number:

This IBM Agreement for Services (Excluding Maintenance) (called the "Agreement") governs transactions by which the Customer acquire Services from IBM East Europe/Asia Ltd.. ("IBM").

Article 1. Definitions

- 1.1. **Enterprise** is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50%. The term "Enterprise" applies only to the portion of the Enterprise located in Russian Federation .
- 1.2. **Materials** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the Customer as part of a Service. The term "Materials" does not include licensed program products available under their own license agreements.
- 1.3. **Service** is performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information database) IBM makes available to the Customer.
- 1.4. **Transaction** - business deals, contractual relations between the Parties during Service provision under the present Agreement

Article 2. Agreement Structure

- 2.1. 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 a statement of work, supplement, schedule, invoice, 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.
- 2.2. 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.

Article 3. Acceptance of terms

- 3.1. The Customer accepts the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Service, or allowing others to do so, or 3) making any payment for the Service.
- 3.2. A Service becomes subject to this Agreement when IBM accepts the Customer's order by 1) sending the Customer a signed Transaction Document or 2) providing the Service.
- 3.3. Any Attachment or Transaction Document will be signed by both parties if requested by either party.
- 3.4. In respect of Services, IBM and the Customer will sign an Acceptance Act as provided in a relevant Transaction Document.

Article 4. Charges and Payment

4.1. Charges

- 4.1.1. 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 travel related expenses). IBM will inform the Customer in advance whenever additional charges apply.
- 4.1.2. 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.
- 4.1.3. 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.

- 4.1.4. If a Transaction document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.
- 4.2. Usage Charges**
- 4.2.1. One-time and recurring charges may be based on measurements of actual or authorized use. Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.
- 4.2.2. If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.
- 4.3. Changes to charges**
- 4.3.1. 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.
- 4.3.2. Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges, labor rates, and minimums for Services provided under this Agreement, by giving Customer 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.
- 4.3.3. IBM may increase one-time charges without notice.
- 4.3.4. Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.
- 4.4. Payment**
- 4.4.1. Amounts are due upon receipt of invoice and payable as specified in a Transaction Document. The Customer agrees to pay accordingly, including any late payment charge. Payment may be made by payment orders to an account specified by IBM.
- 4.4.2. 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), the Customer may be subject to late payment charges in the amount 2% per month, apportioned for the days of delay.
- 4.4.3. Payment should be made in roubles. If the agreement indicates amounts in USD or other foreign currency, invoice amounts are converted into Russian rubles using the official exchange rate valid [in effect] by Central Bank of Russian Federation on the first working day of the month in which invoice was issued. VAT is included in the invoice amount.
- 4.4.4. The payment obligation is considered performed at the moment when the relevant sum is credited to IBM's account at the bank specified by IBM.
- 4.5. Taxes**
- 4.5.1. 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 the Customer agrees to pay that amount as specified in an invoice unless the Customer supplies exemption documentation.
- 4.5.2. 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.

Article 5. Changes to the Agreement Terms

- 5.1. In order to maintain flexibility in the Parties' business relationship, IBM may change the terms of this Agreement by providing the 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, ongoing transactions that do not expire and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, the Customer may request that IBM defer the effective date of a notified change until the end of the current contract period.
- 5.2. Customer acknowledges its agreement to have these changes apply for such transactions by 1) placing new orders after the change effective date, 2) failing to request that the change effective date be deferred until the start of the next re-

newal period, 3) allowing transactions to renew after receipt of the change notice, or 4) failing to terminate non-expiring transactions prior to the change effective date.

5.3. Changes to charges are implemented as described in the Charges and Payment section above.

Article 6. Personnel

- 6.1. 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.
- 6.2. 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.

Article 7. Materials Ownership and License

- 7.1. An Attachment or Transaction Document will specify Materials to be delivered to the Customer. IBM will identify them as being "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.
- 7.2. 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 for the term of validity of the exclusive right to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.
- 7.3. 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 for the term of validity of the exclusive right to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.
- 7.4. 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.
- 7.5. Each of the Parties agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

Article 8. Customer Resources

- 8.1. If Customer is making available to IBM any facilities, software, hardware or other resources in connection with our 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.
- 8.2. 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.

Article 9. Warranty for IBM Services

- 9.1. 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 Transaction document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.
- 9.2. This warranty is the Customer's exclusive warranty and replaces 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 or for ordinary use of the results of the services of such kind and any warranty of non-infringement.
- 9.3. IBM does not warrant uninterrupted or error-free operation of any deliverable or Service or that IBM will correct all defects. Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials and non-IBM

Services without warranties of any kind. However, non-IBM suppliers may provide their own warranties to the Customer.

Article 10. Automatic Service Renewal

Renewable Services renew automatically for a same length contract period unless either of the Parties 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.

Article 11. Patents and Copyrights

11.1. If a third party claims that Materials IBM provides to the Customer infringe that party's patent or copyright, IBM will defend the Customer against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Customer:

11.1.1. promptly notifies IBM in writing of the claim; and

11.1.2. allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations.

11.2. Remedies

11.2.1. If such a claim is made or appears likely to be made, the Customer agrees to permit IBM to enable the Customer to continue to use the Materials, or to modify them, or replace them with Materials that are at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Customer agrees to return the Materials to IBM on its written request. IBM will then give the Customer a credit equal to the amount the Customer paid IBM for the creation of the Materials.

11.2.2. This is IBM's entire obligation to the Customer regarding any claim of infringement.

11.3. Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

11.3.1. anything the Customer provides which is incorporated into the Materials or IBM's compliance with any designs, specifications, or instructions provided by the Customer or by a third party on the Customer's behalf;

11.3.2. modification of a Material by Customer or a third party on Customer's behalf;

11.3.3. the combination, operation, or use of the Materials with any product, hardware device, program, data, apparatus, method, or process that IBM did not provide as a system if the infringement would not have occurred were it not for such combination, operation or use, or

11.3.4. the distribution, operation or use of the Materials for the benefit of a third party outside the Customer's Enterprise.

Article 12. Limitation of Liability

12.1. Circumstances may arise where, because of a default on IBM's part or other liability, the Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Service (including any Material provided with the Service) or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of the equivalent of:

12.1.1. € 500,000 (five hundred thousand euro) in rubles according to the exchange rate published by Central Bank of Russia 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

12.1.2. the charges (if recurring, 12 months' charges apply) for the Service that is the subject of the claim.

12.2. IBM's liability under the art. 395 of the Civil Code of Russia is excluded to the extent permitted by law, otherwise its amount shall be defined in accordance with the aforementioned article and in no event shall exceed 18% per annum.

12.3. This limit also applies to any of IBM's subcontractors and program developers. It is the maximum for which IBM and its subcontractors and program developers are collectively responsible.

12.4. The following amounts are not subject to a cap on the amount of damages:

12.4.1. payments referred to in the Intellectual Property Protection section above; and

12.4.2. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

12.5. Items for Which IBM is Not Liable

Except as expressly required by law without the possibility of contractual waiver under no circumstances is IBM or its sub-contractors or program developers liable for any of the following even if informed of their possibility:

- 12.5.1. loss of, or damage to, data;
- 12.5.2. special, incidental, exemplary or indirect damages or for any economic consequential damages; or
- 12.5.3. lost profits, business, revenue, goodwill, or anticipated savings.

Article 13. IBM Business Partners

- 13.1. IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain products and Services. Customer may order IBM 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.
- 13.2. 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.

Article 14. General Principles of The Parties' Relationship

14.1. Notices and Communications

- 14.1.1. To the extent permissible under applicable law, 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.
- 14.1.2. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship 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.

14.2. Assignment and Resale

- 14.2.1. Neither party may assign rights and obligations related to this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to assign without consent is void.
- 14.2.2. The assignment of the rights related to 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.
- 14.2.3. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
- 14.2.4. Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

14.3. Compliance with Laws

- 14.3.1. 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 Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular 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.
- 14.3.2. Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

14.4. Dispute Resolution

- 14.4.1. 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.
- 14.4.2. All disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitrazh Court of Moscow.

14.5. Other Principles of Our Relationship

- 14.5.1. 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.
- 14.5.2. 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.
- 14.5.3. 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.
- 14.5.4. 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.
- 14.5.5. Customer authorizes International Business Machines Corporation and its subsidiaries (and their successors and assigns, contractors and IBM Business Partners) to store and use Customer's business contact information wherever they do business, in connection with IBM products and Services or in furtherance of IBM's business relationship with Customer.

For the purposes of this sub-Clause 14.5.5, the following additional definitions shall apply:

"Business Contact Information" means business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.

"Business Contact Personnel" means the Customer employees and contractors to whom the Business Contact Information relates.

"Data Protection Authority" means the authority having the relevant powers in accordance with the Federal Law №152-FZ "On Personal Data".

"Data Protection & Electronic Communications Legislation" means the Constitution of Russian Federation, Labour Code of Russian Federation, Law on Commercial secret, Law on Personal Data, Law on Electronic Signature or any statutory replacement or modification thereof.

"IBM Group" means International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective 'Business Partners' and subcontractors. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

Customer authorizes IBM to process and use Business Contact Information for the purpose of furthering the business relationship between Customer and IBM Group, including the marketing of products and services (the **"Specified Purpose"**).

Customer agrees that Business Contact Information may be disclosed to, and processed and used by, IBM Group in pursuit of the Specified Purpose.

IBM agrees that all Business Contact Information will be processed in accordance with the applicable Data Protection & Electronic Communications Legislation and will be used only in accordance with the Specified Purpose.

To the extent that the Data Protection & Electronic Communications Legislation requires them, Customer represents that it has obtained (or will obtain) such consents from and has issued (or will issue) such notices to, the Business Contact Personnel as are necessary in order to enable the IBM Group to process and use the Business Contact Information to contact them, including by email, in accordance with the Specified Purpose.

Customer consents to IBM transferring Business Contact Information outside Russian Federation, provided that any such transfer is made on contractual terms approved by the Data Protection Authority as ensuring adequate safeguards for the rights and freedoms of data subjects.

- 14.5.6. 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 as described in the Intellectual Property Protection section above or 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.

- 14.5.7. 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.
- 14.5.8. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- 14.5.9. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- 14.5.10. 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.
- 14.5.11. All provisions of this Agreement apply to extent that they are not prohibited under applicable law.

Article 15. Geographic Scope and Governing Law

- 15.1.1. The rights, duties, and obligations of each party are valid only in Russian Federation except that all licenses are valid as specifically granted.
- 15.1.2. Both parties agree to the application of the laws Russian Federation 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.
- 15.1.3. 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.
- 15.1.4. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

Article 16. Agreement Termination

- 16.1. Either of the Parties may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations.
- 16.2. Either of the Parties 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.
- 16.3. Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of the Parties' respective successors and assignees.

Article 17. Termination and Withdrawal of a Service

- 17.1. Either of the Parties may terminate a Service if the other does not meet its obligations concerning the Service.
- 17.2. The Customer may terminate a Service on notice to IBM provided the Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.
- 17.3. The Customer agrees to pay IBM for 1) all Services IBM provides and any Materials IBM delivers through Service termination, 2) all expenses IBM incurs through Service termination, and 3) any charges IBM incurs in terminating the Service.
- 17.4. IBM may withdraw a Service or support for an eligible product on three months' written notice to the Customer. If IBM withdraws a Service for which the Customer has prepaid and IBM has not yet fully provided it to the Customer, IBM will give the Customer a prorated refund.
- 17.5. Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement between the Parties, and replace any prior oral or written communications, regarding the acquisition of Services. No machines or licensed program products are acquired under this Agreement. By signing below both of the Parties agree to the terms of this Agreement without modification. The Parties may indicate their acceptance of this Agreement, Attachments and Transaction Documents by exchanging signed copies of them via facsimile, electronic imaging or other technical means. Such copies made by reliable means (for example, photocopy, electronic image or facsimile) are considered to be valid and having legal force..



Agreed to:

Customer Company name:

Agreed to:

IBM East Europe /Asia Ltd.

By _____

Authorized Signature

Name (type or print):

Date:

Customer identification number:

Customer address:

By _____

Authorized Signature

Name (type or print):

Date:

Agreement number:

IBM address: 10, Presnenskaya nab., Moscow, 123317,
Russia.