

IBM General Commercial Terms for Machines



These IBM General Commercial Terms (called the "Commercial Terms") govern transactions by which Customer purchases Machines from **IBM Ceska republika, spol. s r.o.** ("IBM"). These Commercial Terms, including its applicable Attachments and Transaction Documents, are the complete agreement ("Agreement") regarding transactions by which Customer purchases Machines from IBM.

1. Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or 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

Customer-set-up Machine (CSU) – an IBM Machine that Customer is responsible for installing according to instructions provided with it.

Date of Installation –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after delivery of the Machine to Customer's designated location; and

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.

Licensed Internal Code (called "LIC") – Machine Code used by certain IBM Machines IBM specifies (called "Specific Machines").

Machine – a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to Customer.

Machine Code – microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine for the purpose of enabling the Machine's function as stated in its Specifications. The term "Machine Code" includes LIC.

Specifications – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

3. Acceptance of Terms

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

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any 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 Products, based on one-time payment. If additional charges may apply (such as special handling or travel related expenses), IBM will inform Customer in advance whenever additional charges apply.

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.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) IBM ships Customer the Machine within three months after IBM's receipt of the order.

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. 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 Terms

In order to maintain flexibility in mutual business relationship, 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 Products or 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. Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms apply.

8. Delivery

Delivery dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

9. Title and Risk of Loss

IBM transfers title to a Machine to Customer or, if applicable, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or another type of upgrade acquired for a Machine, IBM reserves transfer of title until IBM receives payment of all the amounts due and, as applicable, all removed parts, which become IBM's property.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

10. Installation

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

11. Upgrades and Engineering Changes

As used in this section, the term "upgrade" includes, without limitation, features and conversions. IBM sells upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 days of the shipment of an upgrade, Customer agrees to install the upgrade or, if IBM is responsible for the installation, to allow IBM to install the upgrade. Otherwise, IBM may terminate the transaction and Customer must return the upgrade at Customer's expense.

Customer agrees to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine.

Many upgrades and engineering changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the upgrade or engineering change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install upgrades and engineering changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

12. Machine Code

Machine Code is licensed under the terms and restrictions of the Machine Code license agreement (e.g. IBM License Agreement for Machine Code, IBM Agreement for Licensed Internal Code, or an equivalent) provided with the Machine Code. Customer acceptance of the terms of this Agreement includes acceptance of IBM's Machine Code license agreements, current versions of which are available at the following URL: http://www-304.ibm.com/ict01004c/systems/support/machine_warranties/machine_code.html or by contacting an IBM representative. Machine Code license agreements may be amended by IBM from time to time. Such amended license terms will apply only to Machine Code that is supplied after such amended terms become effective.

Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which Customer has acquired IBM's written authorization. Customer agrees to use Machine Code only as specified in this Agreement and as may be further authorized or restricted in its applicable license agreement. Without limiting additional restrictions in the applicable license, Customer may not:

- a. otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as IBM may authorize in the Machine's user documentation or in writing to Customer;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code unless expressly permitted by applicable law without the possibility of contractual waiver;
- c. sublicense or assign the license for Machine Code; or
- d. lease Machine Code or any copy of it.

International Business Machines Corporation, one of its subsidiaries, or a third party owns Machine Code including all copyrights in Machine Code and all copies of Machine Code (this includes the original Machine Code, copies of the original Machine Code, and copies made from copies). Machine Code is copyrighted and licensed (not sold).

Title will not be transferred when IBM supplies features, conversions or upgrades which consist solely of Machine Code.

The capacity of certain Machines is limited by technological measures in Machine Code. Customer agrees to IBM's implementation of such technological measures to limit Machine capacity.

13. Disposal of Machines

- 13.1 As from the effective date in Customer's country of local laws and regulations implementing Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE), the following will apply: when any Machine supplied under this Agreement replaces a machine put on the market before August 13, 2005, then IBM will collect and dispose of such replaced machine provided that IBM is required to do so by applicable law. IBM may charge for such collection and disposal to the extent permitted by applicable law.
- 13.2 Customer is responsible for making the WEEE available for collection from Customer's premises within 30 days after supply of the replacement Machine.
- 13.3 Whenever IBM collects and disposes of Customer WEEE, based on a legal or contractual obligation, Customer agrees:
- a. to securely erase from any WEEE, all programs not provided by IBM with the original equipment and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - b. to remove all funds, if any, from WEEE, returned to IBM.
 - c. IBM is not responsible for saving or protecting any funds, programs not provided by IBM with the original equipment, or any data contained in a WEEE that Customer returns to IBM; and
 - d. IBM may ship all or part of the WEEE or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

14. Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

The warranty will not apply to the extent that there has been misuse (included but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, improper maintenance by the Customer, or failure caused by a product for which IBM is not responsible. The warranty is voided by removal or alteration of Machine or parts identification labels.

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.

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

IBM will identify IBM Machines that it does not warrant.

Unless IBM specifies otherwise, IBM provides non-IBM Machines without warranties of any kind. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to the Customer.

14.1 Warranty Service for Machines

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an engineering-change level compatible with the feature, conversion, or upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
 - (1) follow the problem determination and service request procedures that IBM provides,
 - (2) secure all programs, data, and funds contained in a Machine, and
 - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
 - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
 - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
 - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

14.2 Replacements

When Service involves the exchange of a part or Machine, the item IBM replaces becomes its property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 days of Customer's receipt of the replacement.

14.3 Items Not Covered

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

14.4 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

15. 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.

16. Intellectual Property Protection

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

16.1 Third Party Claims

If a third party claims that a Product IBM provides to Customer 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 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.

16.2 Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM to enable Customer to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, Customer agrees to return the Product to IBM on IBM's written request. IBM will then give Customer a credit equal to net book value of Machine calculated according to generally-accepted accounting principles.

16.3 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 Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. modification of a Product by Customer or a third party on Customer's behalf, or an ICA Program's use other than in accordance with its applicable licenses and restrictions;
- c. the combination, operation, or use of a Product 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;
- d. the distribution, operation or use of a Product outside Customer's Enterprise; or
- e. infringement by a non-IBM Product or an Other IBM Program alone.

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

17. Limitation of Liability

17.1 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 damage 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 and Machine Code. This limit also applies to any of IBM's subcontractors and Program developers.

Referring to § 379 of the Commercial Code and concerning all conditions related to the conclusion of this Agreement, both contractual parties state that the total foreseeable damage, which may accrue, shall not exceed the sum set forth in paragraph above. It is the maximum 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. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

17.2 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.

18. General Principles of Relationship

18.1 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.

18.2 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. 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.

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

Customer agrees to acquire Machines with the intent to use them within its Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machines; or
- b. Customer purchases the Machines without any discount or allowance, and does not remarket them in competition with IBM's authorized remarketers.

18.3 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 and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

18.4 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 ANY LEGAL OR OTHER ACTION RELATED TO A BREACH OF THIS AGREEMENT MUST BE COMMENCED NO LATER AS DEFINED BY THE LOCAL LAW (4 YEARS) FROM THE DATE ON WHICH THE CAUSE OF ACTION AROSE.

18.5 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 Product or 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. For the purposes of this sub-Clause 1.11.5.e, 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 Office for Personal Data Protection established by the Act No. 101/2000 of Coll. on the Protection of Personal Data and on Amendment to Some Acts.
 - “**Data Protection & Electronic Communications Legislation**” means the Act No. 101/2000 of Coll. on the Protection of Personal Data and on Amendment to Some Acts 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 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 the European Economic Area, 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.
- 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. All provisions of this Agreement apply to extent that they are not prohibited under applicable law.

19. 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. License termination and termination of a Services transaction are described in Parts 4 and 5, respectively.

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.

20. Geographic Scope and Governing Law

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