



IBM TERMS OF BUSINESS

These Terms of Business and the attached statement of work (the “**Statement of Work**” or “**SOW**”), once signed by both parties, form the entire agreement (“**Agreement**”) between IBM and the client entity named in the SOW (the “**Client**”).

In the event of any conflict between these Terms of Business and the SOW or any other document that forms part of this Agreement, the SOW shall prevail.

1. Services

1.1 Type and Scope – IBM will provide the services specified in the SOW as being IBM's responsibilities (the “**Services**”). Such Services will be performed at the location(s) set out in the SOW.

- Where the SOW refers to Services to ‘perform’, this means that IBM will provide the Client with these Services and will be responsible for the management and control of these Services and Deliverable Materials listed or referred to in the SOW.
- Where the SOW refers to Services to ‘assist’, this means that IBM will assist the Client with the Client's project, but that the Client will be responsible for the overall management and control of the Services.

1.2 IBM Personnel – Where individual IBM employees are named in the SOW, IBM will use commercially reasonable efforts to ensure that such named individuals are available to support IBM's work for the Client during the estimated period stated in the SOW. The Client agrees that IBM may call upon the assistance of other IBM Affiliates (as that term is defined in Clause 8.2 below) in the performance of such Services. If IBM's employees are required to work away from the location where they are permanently assigned, the Client agree to accept flexibility in the way such IBM employees divide their time between such location and the Client sites, to the extent consistent with IBM's performance obligations under this Agreement.

1.3 Timetable – IBM will use commercially reasonable efforts to carry out its obligations in accordance with any dates or time periods referred to or specified in the SOW. However, unless otherwise expressly stated in the SOW, the parties agree that any date or time period stated in the SOW is intended for planning and estimating purposes only, and is not contractually binding.

1.4 Changes - Either the Client or IBM may request changes to the SOW. Requests for changes must be sufficiently detailed to enable the other party to assess the impact of the requested change on the charges, timetable or any other aspect of the Agreement and both of us agree to work together to consider, and if appropriate, seek to agree any changes. Unless otherwise agreed in the SOW, until a change is agreed in writing both parties will continue to act in accordance with the latest agreed version of the Agreement.

2. Deliverable Materials

“**Deliverable 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 Client under the SOW. IBM will deliver to the Client the Deliverable Materials, if any, specified in the SOW as being IBM's responsibility. Deliverable Materials do not include commercially available software or hardware; these are provided under separate agreements.

2.1 Acceptance - Deliverable Materials will be accepted by the Client when the acceptance criteria or Deliverable Materials acceptance procedure, if any, specified in the SOW, have been met, or when the Client make productive use of the Deliverable Materials, whichever occurs first. Where no such criteria or procedure are specified in the SOW, Deliverable Materials will be deemed accepted on delivery to the Client.

2.2 Ownership of Deliverable Materials

IBM will transfer to the Client IBM's title in the Deliverable Materials subject to the following:

2.2.1 Client Materials – The Client will own the copyright in all those Deliverable Materials identified in the SOW as “**Client Materials**”, subject to the remainder of this Clause 2.2. The Client grants to IBM a non-exclusive, royalty-free, world-wide, perpetual right to use, copy, adapt, modify, sub-license and market such Client Materials.

2.2.2 Pre-Existing Works – The copyright and other intellectual property rights in any materials or software (whether written or machine-readable) created by or licensed to IBM or one of its Affiliates prior to this Agreement or outside this engagement and any subsequent modifications to same (“**Pre-Existing Works**”) will remain vested in IBM or one of its Affiliates or a third party. To the extent that Pre-Existing Works are imbedded in any Deliverable Materials, the Client will have a license to use them in accordance with Clause 2.2.3 below.

2.2.3 **Other Deliverable Materials** – IBM or third parties will own the copyright in all Deliverable Materials which are not identified in the SOW as Client Materials and in all other materials or software created under this Agreement whether by or on behalf of IBM solely or both parties jointly (“**Other Deliverable Materials**”). Subject to Clause 2.2.6 below, the Client will have a perpetual non-exclusive, non-transferable license to use these Other Deliverable Materials (and any Pre-Existing Works to the extent that these are embedded in the Client Materials) for the Client’s own internal use and only for the purposes for which they were delivered, but the Client must not provide any Other Deliverable Materials (or any Pre-Existing Works, to the extent that these are embedded in the Client Materials), or copies of them, to any third party. Any Deliverable Materials that are not expressly specified in the SOW as Client Materials will be considered Other Deliverable Materials.

2.2.4 Notwithstanding any other provisions of these Terms of Business, the use of any Deliverable Materials consisting of computer software which is not identified as Client Materials will be subject to the terms of the license agreement provided with the software or (if no such license is provided) the license terms referred to in the SOW. Where no such license terms are referenced, the Client may use the software in accordance with the license granted by Clause 2.2.3 above.

2.2.5 Each of us grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.

2.2.6 The rights provided to the Client by IBM in the Deliverable Materials, (including the Client’s ownership of copyright in Client Materials) as specified above, and the rights granted to the Client under Clause 2.2.3 above, are subject to payment by the Client of amounts due under this Agreement.

2.2.7 Notwithstanding any other provision of this Agreement, IBM and its Affiliates will not be prevented or restricted by this Agreement from using any technique, idea, concepts or know-how relating to IBM’s or its Affiliates’ business activities.

3. The Client’s Responsibilities

IBM’s performance is dependent on the Client cooperating with IBM and carrying out the Client’s responsibilities as set out in this Agreement.

3.1 Facilities – The Client agrees to provide IBM and its personnel with suitable office space, and other accommodation and facilities that IBM may reasonably require to perform the Services, in particular , supplies, furniture, computer facilities, telephone/fax communications, analogue lines and remote dial-up access capability, parking and other facilities for IBM personnel while providing the Services. The Client will be responsible for ensuring that the Client has appropriate backup, security and virus-checking procedures in place for any computer facilities he provides or which may be affected by the Services.

3.2 Information and Materials – The Client agrees to provide all information and materials reasonably required to enable IBM to provide the Services. The Client agrees that all information disclosed or to be disclosed to IBM is and will be true, accurate and not misleading in any material respect. IBM will not be liable for any loss, damage or deficiency in the Services arising from inaccurate, incomplete, or otherwise defective information and materials supplied by the Client.

3.3 The Client’s staff – The Client will ensure that the Client’s staff are available to provide such assistance as IBM reasonably requires and that IBM is given reasonable access to the Client’s senior management, as well as any members of the Client’s staff to enable IBM to provide the Services. The Client will ensure that the Client’s staff have the appropriate skills and experience. If any of the Client’s staff fails to perform as required, the Client will make suitable additional or alternative staff available.

3.4 Suppliers and other Third Parties – The Client will ensure that the Client has appropriate agreements in place with third parties to enable IBM to perform the Services under the Agreement, where the Client are using or providing IBM with third party information, support or materials for a project including but not limited to where the Client are employing other suppliers whose work may affect IBM’s ability to provide the Services. Unless specifically agreed to otherwise in writing, the Client will be responsible for the management of the third parties and the quality of their input and work. Except to the extent IBM specifically agrees otherwise in the SOW, the Client will be solely responsible for any third party hardware, software or communications equipment used in connection with the Services.

4. Fees and Payment

4.1 How fees will be calculated – Unless the SOW states otherwise, the Services will be conducted on a time and materials basis. Any professional services charges payable under the SOW are exclusive of travel and living expenses and other reasonable expenses incurred in connection with the Services. Such expenses are also chargeable. Travel time, other than time spent travelling from a local residence to the normal place of work, is chargeable as part of the hours provided for the Services.

4.2 Taxes – Charges and expenses will be stated exclusive of any taxes. If any authority imposes a duty, tax, levy, or fee, upon any transaction under this Agreement, then the Client agrees to pay that amount as specified in an invoice or supply exemption documentation.

4.3 Payment of Invoices – IBM will invoice in accordance with the terms of the SOW. Unless the SOW states otherwise, all amounts will be specified in DKK. Amounts are due and payable upon receipt of invoice. If payment is not made 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 Client may be subject to late payment charges. The late payment charges will be calculated according to the Interest Act apportioned to the number of days of delay.

4.4 Fee changes – IBM may increase time and material rates for Services by giving the Client thirty days' written notice.

5. Term and Termination

5.1 Duration of Agreement – This Agreement will apply from the Commencement/Start Date stated in the SOW, if any, or where no Commencement/Start Date is specified, from the date of signature of the SOW by both parties. This Agreement will continue until the Services have been provided as stated in the SOW, or the Agreement is terminated earlier in accordance with the terms set out below.

5.2 Termination on Notice – Unless the SOW states otherwise, this Agreement may be terminated by either party at any time by giving the other party not less than 30 days' written notice.

5.3 Termination for Breach – This Agreement may be terminated by either party on written notice with immediate effect if the other commits a material breach of any term of this Agreement which is not remedied within 30 days of a written request to remedy the same (or if it is not practical to remedy the breach within such period, if reasonable steps have not been taken within the 30 days towards remedying the breach).

5.4 Effect of Termination – On the termination of this Agreement, the Client will pay IBM for all Services provided up to the date of termination, and where the Client terminates on notice or IBM terminates for breach for additional costs IBM reasonably incurs as a result of the early termination of the Services, such as costs relating to sub-contracts or relocation costs. IBM will take reasonable steps to mitigate any such additional costs. Unless specified otherwise in the SOW, where the Services have been provided on a fixed price fees basis, the Client will pay IBM all sums due at the date of termination in accordance with the payment plan set out in the SOW, plus any related payments withheld, together with fees on a time and materials basis for Services provided after the date of the last applicable payment under the payment plan.

6. Confidentiality

6.1 IBM agrees that information labelled as confidential by the Client and all financial, statistical, customer, marketing and personnel data relating to the Client's business, in each case as disclosed to IBM in connection with this Agreement, are the Client's confidential information ("**Client Confidential Information**"). The Client agrees that information labelled as confidential by IBM and IBM's methodologies (including without limitation, ascendant™), products, tools and proprietary software, training materials, industry templates and data, and any updates, changes and additions to the foregoing, in each case as disclosed to the Client in connection with this Agreement, are confidential information of IBM ("**IBM Confidential Information**"). Client Confidential Information and IBM Confidential Information are collectively referred to as "**Confidential Information**". Neither party will, without the prior written consent of the other, disclose to any third party any Confidential Information which is received from the other party for the purposes of providing or receiving Services. Each party agrees that any such Confidential Information received by it from the other may be used by its (and its respective Affiliates') personnel only for the purposes of providing or receiving Services under this or any other contract between the parties. These restrictions will not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of an obligation under this Clause 6; (ii) is acquired from a third party without an obligation of confidentiality; (iii) is or has been independently developed by the recipient (or one of its Affiliates) or was known to it or them prior to receipt; or (iv) is generally known or easily ascertainable by non-parties of ordinary skill in computer or process design or programming or in the business of the Client. Neither party will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own confidential information. Confidential Information disclosed under this Agreement will be subject to this Clause 6 for 2 years following the initial date of disclosure.

6.2 Notwithstanding Clause 6.1 above, each party will be entitled to disclose Confidential Information of the other: (i) to its respective insurers or legal advisors; and (ii) to a third party, to the extent that this is required by any court of competent jurisdiction, by a governmental or regulatory authority, or where there is a legal right, duty or requirement so to disclose, provided that in the case of sub-Clause 6.2 (ii) where reasonably practicable (and without breaching any legal or regulatory requirement) not less than 2 business days' notice in writing is first given to the other party. Notwithstanding anything to the contrary, IBM may disclose Confidential Information referred to in this Clause 6 to (i) IBM's Affiliates or (ii) a third party as may be necessary for the delivery of the Services, subject to such third party agreeing, in writing, to be bound by similar terms and conditions. IBM may similarly retain the engagement work papers in 'hard copy' or electronic format for IBM's or its Affiliates' internal use.

6.3 Notwithstanding Clause 6.1 and Clause 6.2 above, IBM may cite the performance of the Services to its clients and prospective clients as an indication of IBM's experience, unless the Client and IBM specifically agree otherwise in writing.

7. Liability

7.1 Limitation

Except as otherwise provided by mandatory law:

- (a) IBM's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations or due to any other cause related to this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations, not exceeding the greater of the following:
 - (i) DKK 4.000,000 or
 - (ii) the amount of the price of the Service (if periodical or recurring, 12 months' charges apply) that has caused the damages and losses.
- (b) The limit of liability stated in section (a) above shall not apply to:
 - (i) damages for bodily injuries (including death) or damages to tangible personal property and real property for which IBM is legally liable; and
 - (ii) payments due under the Patents and Copyright section below.
- (c) Under no circumstance shall IBM be liable for any of the following:
 - (i) loss of profits, even when they arise as an immediate consequence of the event that generated the damages;
 - (ii) indirect, consequential or incidental damages and losses, even when these damages or losses could have been foreseen or IBM had been informed of the possibility of their possible occurrence;
 - (iii) loss of, or damage to, data; and
 - (iv) lost business, revenue, goodwill, or anticipated savings.
- (d) The limitation of liability in this section applies not only to the activities performed by IBM but also to the activities performed by its Affiliates, subcontractors, suppliers and program developers, and represents the maximum amount for which IBM as well as its Affiliates, subcontractors, suppliers and program developers, are collectively responsible.

8. General

8.1 Subcontracting – IBM may subcontract any part of the Services to one or more subcontractors selected by IBM. However, this will not affect IBM's obligations to the Client for Services provided under this Agreement, subject to the other provisions of this Agreement. Any reference to IBM's personnel in this Agreement includes IBM's agents and subcontractor staff.

8.2 Affiliates – In this Agreement, "Affiliate" means any entity which from time to time Controls, is Controlled by or is under common Control with the relevant party or entity, where "Control" means having the ability (including, without limitation, by means of a majority of voting rights or the right to appoint or remove a majority of the board of directors) to control the management and policies of an entity.

8.3 Force Majeure – Neither party will be liable to the other for any failure to fulfil obligations caused by circumstances outside its reasonable control. This clause does not apply to any of the Clients obligations to pay charges for Services provided.

8.4 Export and Import - 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.

8.5 Assignment – Neither of the parties may assign the Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither of the parties will unreasonably withhold such consent. The assignment of the Agreement, in whole or in part, within the Enterprise of which either of the parties is a part, where "Enterprise" means any legal entity and the subsidiaries it owns by more than 50 percent within Denmark, 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 under the Agreement without obtaining the Client'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 clients.

8.6 Waiver – Subject to Clause 8.9, no delay by either party in enforcing any of the terms or conditions of this Agreement will affect or restrict such party's rights and powers arising under this Agreement. No waiver of any term or condition of this Agreement will be effective unless made in writing.

8.7 Notices – Notices must be in writing and served either personally, sent by prepaid registered post or faxed to the address of the other party given in this Agreement or to any other address as the relevant party may have notified to the other during the period of this Agreement. Any notice sent by post will be deemed to have been delivered 48 hours after sending. Any notice sent by fax or served personally will be deemed to have been delivered on the first working day following its delivery.

8.8 Electronic Communication- To the extent permitted under applicable law, each of us may communicate with the other by electronic means and such communication is acceptable as 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.

8.9 Amendment – Any amendment to this Agreement will not be effective unless agreed in writing and signed by both parties. Additional or different terms in any written communication from the Client (such as an order) are void.

8.10 Survival and Validity of Agreement Provisions – The provisions of this Agreement which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind both parties. If any provision of this Agreement is held to be invalid, in whole or in part, such provision (or relevant part, as the case may be) shall be deemed not to form part of this Agreement. In any event, the enforceability of the remainder of this Agreement will not be affected. Neither party will bring a legal action arising out of or related to this Agreement more than two years after the cause of action arose.

8.11 Working for other clients – IBM and its Affiliates will not be prevented or restricted by anything in this Agreement from providing services for other clients.

8.12 Relationship of Parties - IBM is an independent contractor, and is responsible for the payment of all employer contributions and taxes measured by the remuneration paid to IBM employees as required by all applicable federal, state and local laws. IBM does not undertake to perform any regulatory obligation of Client or to assume any responsibility for Client's business or operations. The Client is responsible for the results obtained from the use of the Services.

8.13 Patents and Copyrights

8.13.1 If a third party claims that Deliverable Materials IBM provides to the Client infringe that third party's patent or copyright, IBM will defend the Client 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 Client:

- 1) promptly notifies IBM in writing of the claim; and
- 2) allows IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations.

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

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

8.13.3 Claims for Which IBM is Not Responsible

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

1. anything the Client provides which is incorporated into the Deliverable Materials or IBM's compliance with any designs, specifications, or instructions provided by the Client or by a third party on the Client's behalf;
2. the Client's modifications of Deliverable Materials; or
3. the combination, operation, or use of the Deliverable Materials with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of the Deliverable Materials for the benefit of a third party (excluding the Client's Affiliates).

8.14 Third party claims – Subject to clause 7, this Agreement will not create any right or cause of action for any third party. Under this Agreement IBM will not be responsible for any third party claims against the Client, or the Client's Affiliates, except as described in the Patents and Copyrights clause above or as permitted by the Liability clause above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.

8.15 Contact Information – The Client agrees to allow International Business Machines Corporation and its subsidiaries to store and use the Client's contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to contractors, Business Partners, and assignees of International Business Machines Corporation and its subsidiaries for uses consistent with their collective business activities, including communicating with the Client (for example, for processing orders, for promotions, and for market research).

8.16 Entire Agreement – This Agreement, including any attachment or referenced document, forms the entire agreement between the Client and IBM relating to the Services. It replaces and supersedes any previous proposal, correspondence, understanding or other communication, whether written or oral. Neither party is liable to the other, in equity or otherwise, for any representation that is not set out in this Agreement. Each party acknowledges that it has not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement. The headings and titles in this Agreement are included to make it easier to read, but do not form part of this Agreement.

9. Warranties

IBM warrants that it performs each of the Services using reasonable care and skill and according to its current description (including completion criteria) contained in the SOW. These warranties are the Client's exclusive warranties and replace all other warranties or conditions, expressed or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

10. Geographic Scope, Governing Law and Dispute Resolution

10.1 Geographic Scope – The rights, duties, and obligations of each of us are valid only in Denmark, except that all licenses are valid as specifically granted.

10.2 Resolving Disputes – Should any dispute arise between the Client and IBM, the parties will attempt to resolve the dispute in good faith by negotiations in accordance with the Escalation Procedure, if any, described in the SOW. Where both the Client and IBM agree that it may be beneficial, the parties will seek to resolve the dispute through non-binding mediation without prejudice to the parties' right to take separate action in the case of: (i) any application for injunctive relief to prevent or restrain an infringement or a breach of any obligation of confidentiality, or (ii) the collection of any outstanding and overdue debt owed under this Agreement.

10.3. Governing Law and Jurisdiction – The laws of Denmark, without regard to conflict of law principles, govern an Agreement under these Terms of Business.

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