



## General Terms and Conditions (GTC) of IBM iX Switzerland AG

### 1 Scope of Application

1.1 The following General Terms and Conditions (GTC) shall apply to all contracts for work and services ("AusführungsDienstleistungen Art. 363 ff Obligationenrecht") or contracts for services ("Beratungs-Dienstleistungen, Art. 394 Obligationenrecht") of the IBM iX Switzerland AG. IBM iX Switzerland AG shall in the following be referred to as "Agent".

1.2 The following GTC shall apply exclusively. The Client's GTC shall not apply unless its application will expressly be acknowledged in writing by the Agent.

1.3 Besides these GTC, special terms and conditions of the Agent may apply additionally.

1.4 A contract shall become effective upon the Client's and Agent's signing of an order form respectively signing of a quotation or upon the Client's written order and the Client's subsequent receipt of the Agent's corresponding order confirmation.

### 2 Performance Periods

Unless deadlines will not have expressly been agreed upon as binding within the Contract (fixed date), performance periods shall be non-binding.

### 3 Remuneration

3.1 Remuneration shall be agreed upon as a fixed price or according to the effort (time and materials basis). For a remuneration determined by effort [Aufwand], billing shall be calculated according to the respectively applicable charge rates, if nothing to the contrary has been agreed upon.

3.2 Prices quoted by the Agent shall be considered as net prices in CHF, if nothing to the contrary has been agreed upon.

3.3 Value added tax shall be charged according to the value added tax rate applicable at the time of the service provision. In case the value added tax rate should be changed during the contractual period, then the periods with the respective value added tax rates shall be considered as agreed upon separately.

3.4 Unless otherwise agreed, charges and other levies shall be borne by the Client, even if those should be levied at a later date.

3.5 The Agent may increase charge rates and minimum rates for services provided under these GTC by written notification with a period of four (4) months. The increase shall be effective upon invoicing, at the beginning of a calculation period or on the date stipulated in the notification.

### 4 Adjustment for inflation

4.1 The contracting parties shall be entitled to demand a price adjustment once a year in line with general economic changes as described below.

4.2 This price adjustment shall be applied to all prices agreed in the framework contract or an individual contract in the year of the price adjustment and all subsequent years of the agreed contractual term, unless expressly agreed otherwise therein.

4.3 The price adjustment shall take place for the first time not less than 12 months following conclusion of the contract. IBM iX shall notify the Client of the adjusted prices and shall invoice the Client for the agreed services on the basis of the adjusted prices as of the notification. Should this price index be corrected after publication and should this correction not yet have been taken into account





by IBM iX in the price adjustment, IBM iX shall correct the price adjustment accordingly, also on a retroactive basis.

4.4 The Client and IBM iX agree to use the Consumer Price Index, subindex private services, to determine the price adjustment. Should this price index no longer be available, or should it have been substantially changed, a comparable index published at least annually from a source accepted by both Parties shall be used in its place.

4.5 The index value from the previous year (Current Index) and the index value used in the year of the last price adjustment (as Current Index) shall be used to calculate the price adjustment (Last Index Used). Should a price adjustment not yet have been made for this contract, the index of the last year before the start of the contract (base year index) shall be used as the Last Index Used.

## **5 Other Costs**

5.1 The Agent's travel times shall have to be refunded at 50% of the agreed charge rates. Documented travel expenses shall have to be refunded by the Client as follows: using motor vehicles at CHF 0.70 per kilometre driven up to 10.000 km; CHF 0,60 per kilometre driven from 10.001 km; economy flights within the EU and Switzerland; 2nd class rail fares; taxi rides and overnight accommodation according to actual expenditure; extra board expenses at the rates recognised for tax purposes. Means of transport and overnight accommodation shall have to be chosen whilst considering economic factors.

5.2 The agreed remuneration shall not include waiting times requested by or attributable to the Client. Such waiting times shall be invoiced as additional expenses in accordance with the provisions stipulated under Item 3.1 GTC). In case further expenses should accrue for

the Agent as a result of such waiting times, these expenses shall have to be compensated by the Client separately.

## **6 External Services**

6.1 In case, the Agent should on behalf of the Client – initially on her own account commission third party services, as for instance production orders placed with third parties, acquisition of third party rights (e.g., image rights, sound rights, copyrights personal rights), the Client shall owe towards the Agent a handling fee of 15 % of the respective contract value charged for support, processing and monitoring. In cases where the foreseeable expenditure on third-party services should exceed CHF 10,000.00, the Agent shall be entitled to request advance payments to the amount of the gross order value. These advance payments shall immediately fall due.

## **7 Terms of Payment**

7.1 Remunerations shall fall due for payment immediately after the service has been rendered or in the case of work and service contract after acceptance respectively partial acceptance. If remuneration determined by effort should have been agreed, the Agent may alternatively submit invoices every calendar month.

7.2 Other costs shall fall due for payment on being invoiced. The invoice shall be submitted monthly at the end of the respective calendar month or after execution of the performance. The Parties shall reserve the right to agree on maturity dates for progress payments or monthly lump-sum payments. Upon receipt of payment requests, these shall be due without deduction or retentions. If a payment should not have been credited within 14 days after the invoice date, the Agent may claim default interests at the statutory rate.



7.3 The Client may only set off or retain payments if her counter-claim should be uncontested or should be recognized in an enforceable judgement.

6.4 In the event of default in payment, the Contractor may suspend work until payment has been made, provided that a reasonable period of time previously set for the Client has elapsed without success and the amount owed is not a relatively small amount. Before resuming work, the Client shall agree with the Agent on adapted conditions in a CR.

## **8 Rights of Use**

8.1 The rights of use in the contractual objects [Leistungsgegenstände] that will be granted to the Client shall be determined by the in this respect individually concluded contractual agreements.

8.2 If no provisions, or incomplete provisions, on rights of use should have been concluded in the contractual deed and/or in the Agent's quotation accepted by the Client, the following shall apply:

8.2.1 As a matter of principle, the content, scale and scope of granting rights of use in the contractual objects, as well as any possible restrictions of the rights of use in terms of time frame and locality shall depend upon the purpose of the Contract. At all times, the Client shall only be granted such rights of use needed to enable her to use the contractual objects for the intended purpose.

8.2.2 The Agent shall always grant non-exclusive rights of use in the contractual objects.

8.2.3 As a matter of principle, the Agent will not grant any editing right to the Client. Therefore, the Client shall in particular be prohibited from making the contractual objects available to third parties, especially towards the Agent's competitors, and from giving such third parties access to the contractual objects so that they may edit or rearrange them for the Client. Moreover, on a case-by-case-basis, an individually granted non-exclusive editing right shall not extend to

contractual objects, where source code analyses or changes to the source code will be required for editing or rearranging the contractual objects, unless such practices should have expressly been permitted.

8.3 The Client may not transfer the granted rights of use to third parties. Nor shall the Client receive the right to grant non-exclusive rights of use to third parties, or to allow third parties to use the contractual objects. However, companies in which the Client should participate to more than 50 % (affiliated companies) shall not be considered as third parties.

8.4 Granting of rights of use shall be subject to the condition precedent that the agreed remuneration will be paid in full by the Client. However, the Agent shall acquiesce to the contractual objects being used to the extent agreed in the Contract, as long as no default in payment will have occurred.

8.5 The Agent shall not grant any rights of use to the Client in respect to copyrightable materials (e.g. drafts, concepts, exposés), which have been rejected by the Client.

8.6 Inventions, which will be jointly created by Client's and Agent's employees or by employees of the respectively affiliated companies during the time of providing the service, shall belong to both contractual partners, likewise the right to apply for a proprietary right for the invention and likewise proprietary rights granted on the invention. Each contractual partner shall be entitled to use such proprietary rights and to grant licences to third parties or to transfer her rights without informing the other contractual partner about it, without effecting payments to her. Expenditures to obtain and maintain a joint proprietary right shall be borne by both contractual



partners in equal shares. If a contractual partner should waive the registration in a country, thus the other contractual partner may register the proprietary right in that country at her own expenses and will thus have complete control over the registration and continuity, whereby in each case both contractual partners will remain holder of the proprietary right.

## **9 Source Code**

Unless expressly agreed in the Contract, the Agent shall not surrender any source code to the Client. If delivery of the source code should contractually be agreed upon as part of the contractual objects, the arrangements about rights of use will also apply in this respect. On no account, shall the Agent grant more or other rights in the source code than those granted in the contractual objects. As a matter of principle, no editing rights in the source code will be granted.

## **10 Correction Level**

10.1 In case a correction level should have been contractually agreed upon as regards to the contractual objects, the following procedure will apply:

10.2 At the beginning of the correction level, the Agent shall hand over the work result to the Client, requesting in writing to declare whether the work result does conform to the Contract. Within a period stipulated by the Agent, the Client will declare in writing that the work result does conform to the Contract, or in what respect a correction will yet be necessary.

10.3 Provided such request for a correction does not constitute a change request pursuant to Item 14) of these GTC, the Agent shall revise the work result at no extra charge.

10.4 If the Client should express further requests for corrections after such revision, the Agent will have to point out to the Client that the contractual object

does not include any further revision, and that any further request for a correction shall be treated as a change request.

9.5 In case that the contractual object should include several correction levels, this procedure shall apply mutatis mutandis.

## **11 Client's Cooperation**

11.1 The Client shall have to identify a contact person to the Agent, a contact person who shall be authorised to submit and receive information and declarations of intent.

11.2 The Client shall be obliged to execute any acts of cooperation necessary for rendering the agreed services, in particular, to provide the Agent with all necessary information and documents. Providing inaccurate or incomplete information and/or documents shall be at the Client's expenses.

11.3 The Client shall grant to the Agent sufficient, free, and secure access to her premises and systems (including remote access) as well as provide information, employees and other resources, if this should be required for providing the service by the Agent.

11.4 Insofar as the Client should – in the context of the provision of services – grant access to the Agent to her facilities as well as to software, hardware and to other utilities (including remote access) or make these available, the Client shall procure for the Agent all necessary licences or approvals required for the use of the aforementioned resources needed to provide contractual objects. If the aforementioned licences and/or approvals should not be procured by the Client in good time, the Agent shall be exempt from her obligations, to the extent as those obligations will be affected by the non-fulfilment.

11.5 If the service will have to be altered on account of an omitted act of



cooperation, in particular as a result of information already provided having to be corrected, or as a result of information having to be subsequently submitted, this shall be deemed to be a change request within the meaning of Item 14). If the Agent should stipulate a grace period for the Client in order to fulfil her obligation to cooperate, the Agent shall be entitled to cancellation, upon the futile expiry of the grace period.

11.6 The Client shall be responsible for the materials made available to the Agent in order to implement the Contract to be free from proprietary rights and other rights of third parties that could limit or exclude the planned use. The Client shall exempt the Agent from all claims by third parties that the latter could enforce towards the Agent on account of existing rights in any materials introduced. In this context, the Client shall above all assume all 12.5 and any obligations towards collecting societies.

11.7 The Client shall be responsible for regularly backing up her data as appropriate to the relevance of the respective data.

## **12 Acceptance (Contract for Work and Services)**

12.1 In respect to work performances ("Ausführungs-Dienstleistungen") owed, the Client shall be under the obligation to formally accept the services rendered by the Agent, once the Agent will have given the Client written notification of completion of the service and once the Agent made the services available to the Client. If according to the nature of the contractual object an acceptance testing should be considered, the obligation to declare acceptance shall only apply if the services will have passed an acceptance testing without any substantial defects becoming evident. Unless otherwise agreed, the to be performed acceptance testing and the declaration of

acceptance shall have to be executed within two weeks following notification about completion and surrender of the contractual object.

12.2 If acceptance should justifiably be refused, the aforementioned period for acceptance shall recommence after notification of completion will have been re-issued.

12.3 11.3 Acceptance expressly declared by way of conclusive behaviour, for example by commencement of the intended use, shall be equivalent to an expressed declaration of acceptance. Moreover, if the Client should fail to declare acceptance (also not by way of conclusive behaviour) within a specifically set period, despite being obliged to declare acceptance according to the above provisions, acceptance shall be considered to have been effected.

12.4 The Agent shall reserve the right to present to the Client partial deliveries and/or partial-services for a partial acceptance, insofar as a partial acceptance should be possible given the nature of partial-performance.

## **13 Warranty (Contract for Work and Services)**

13.1 In respect to work performances ("Ausführungs-Dienstleistungen") under a contract for work and services, the Agent shall warrant that the agreed performance characteristics will be fulfilled and will correspond to the scope of performance. In this respect, the Parties shall concur that in terms of software an absolute absence of errors is neither possible nor required.

13.2 The warranty period shall be 60 days, commencing upon the date of acceptance.

13.3 12.3 If, after acceptance during the warranty period, the Client should discover defects that existed at the time of acceptance, but were not visible, the



Client will immediately have to report them to the Agent, but within two weeks after their discovery at the latest. Such notification of defects shall have to be submitted in writing, together with a qualified description of each defect, thus facilitating traceability for the Agent about the reported defect. If such notification should not be given in a timely and proper manner, the contractual object shall be considered as approved in respect to such defect. Asserting warranty claims in this respect will then be excluded.

13.4 The Agent shall eliminate, at her own expenses, all defects that have been duly reported before the warranty period will expire. If an inspection should reveal that no defect exists, the Agent may demand that the time invested be remunerated applying the agreed daily rates, if the Client – on exercising due diligence – could have realized that the Agent's service was not defective.

13.5 To the extent possible, and insofar as it should be acceptable towards the Client as regards to the defect's impact, the Agent shall be entitled to provide an interim solution for working around the defect until the defect will definitively be eliminated.

13.6 The warranty obligation shall be inapplicable if the Client herself should alter the contractual object or if she should mandate third parties to do so, unless the Client will prove that the defect or malfunction is not attributable to the alterations executed by the Client or by third parties.

13.7 If, after receipt of a proper notice of defects, substantial defects should not be eliminated by the Agent within a reasonable period of time but should be contained by means of an acceptable interim solution, the Client shall be obliged to stipulate a further appropriate grace

period towards the Agent. Nonetheless, any circumstances in the Client's sphere, which should prevent, interfere, or delay the elimination of the defects, will be at the Client's expenses. If the Agent should be unable to remedy the defect within the grace period, the Client may – insofar as the performance's value or suitability should be limited – at her own discretion request a reduction in price or termination of the Contract. As regards to negligible defects both compensation for damages and termination of the Contract shall be excluded.

13.8 These warranties are conclusive. All statutory warranty rights are expressly excluded.

#### **14 Protective Rights of Third-Parties**

14.1 The Client shall be responsible for the contractual objects provided to the Agent being free from protective rights and other rights of third parties, which could limit or exclude the implementation of the Contract.

14.2 The Agent shall only be required to scrutinize the legal permissibility of the contractual objects (particularly in terms of competition law and trademark law) if this should expressly be commissioned. In that case – unless otherwise agreed – the Client will bear the fees and costs thus arising for the Agent and for third parties (lawyer, public authorities, etc.) at market conditions. Nor shall the Agent be under any obligation to check the accuracy of any factual statements concerning the Client's products or performances that will be provided or approved by the Client and possibly contained in the contractual objects. The Agent shall be entitled but not obliged to file for the registration of protective rights in respect of her own performances.



## **15 Change Requests**

15.1 If the Client should request a change to be made to the services owed by the Agent, she shall address such change request (CR) to the Agent in writing.

15.2 Among other things a change request shall be given if a.) the Client will issue new requirements not agreed hitherto as regards to the contractual object; or b.) the Client will issue a requirement as regards to the contractual object previously expressly excluded from the contractual object; or c.) the Client will specify a requirement towards the contractual object deviating from what will have previously been agreed upon.

15.3 The Agent shall examine what consequences such change request will have on the contractual object, particularly in respect to remuneration and deadlines. The Agent shall notify the Client in writing if the change request will be unacceptable for the Agent or stating the conditions under which the change request may be realizable.

15.4 Within a period specified by the Agent, the Client shall decide, whether to accept the Agent's quotation for implementing the change request. If no agreement should be reached within the period specified by the Agent, thus the contractual object will remain as originally agreed upon.

15.5 In case that the examination of the change request should hinder adherence to deadlines, the Agent shall inform the Client about this. In any such case, Client and Agent shall undertake to ensure that deadlines will be adjusted. The Agent shall not be in default if Client and Agent fail to reach an agreement on postponing such deadlines due to examining a change request.

15.6 If Agent and Client should fail to agree to alter the contractual object on

account of the change request, the Client shall have to reimburse all expenditure incurred for examining such change request, for preparing a change proposal and for possible waiting times. This expenditure shall be calculated according to the agreed daily rates.

## **16 Agent's Liability**

16.1 Agents's entire liability for all claims related to an Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the product or service that is the subject of the claim, regardless of the basis of the claim. Agent will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings. These limitations apply collectively to Agent, its affiliates, contractors, and suppliers.

16.2 The following amounts are not subject to the above cap: i) third party payments referred to in the paragraph below; and ii) damages that cannot be limited under applicable law.

16.3 If a third party asserts a claim against Client that an Agent service or an Agent product acquired under the Agreement infringes a patent or copyright, Agent will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by Agent, provided that Client promptly: i) notifies Agent in writing of the claim; ii) supplies information requested by Agent; and iii) allows Agent to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.

16.4 Agent has no responsibility for claims based on Non-Agent products and services, items not provided by Agent, or any violation of law or third



party rights caused by content, or any Client materials, designs, specifications, or use of a non-current version or release of an Agent product when an infringement claim could have been avoided by using a current version or release.

### **17 Sub-Contractors/Assignment**

17.1 The Agent shall be permitted to employ sub-contractors for providing the services.

17.2 The Agent shall be entitled to assign or transfer in whole or in part individual rights and obligations from the present Contract to her associated companies, and also to assign the Contract in its entirety, provided that Client's legitimate interests will not be impaired thereby. Furthermore, the contractual Parties shall agree that the assignment of rights from a contract, with exception of the Agent's payment claims, will require the prior approval of the other Party. The approval may only be refused for good cause. The sale of a business unit of the Agent, which will affect all clients of the Agent in equal measure, shall not be considered as an assignment in the afore mentioned sense. Furthermore, no third party may derive any rights from this Contract.

### **18 Termination**

18.1 The Parties may terminate a contract for good cause without notice in writing, if the other Party should fail to fulfil her contractual obligations, even after having been granted an appropriate grace period. However, in case of negligible contract violations a termination without notice shall be excluded.

18.2 An ordinary termination shall be permitted to each Party with a termination period extending to 1/4 of the project's duration, but at least 2 months. In case of a termination on behalf of the Client, the Client shall be obliged to pay for the services as well as for the materials

provided up until the termination of the Contract (in case of an extraordinary termination, due to a reason for which the Agent should be responsible, only for such materials, which are usable for the Client), the Client shall also compensate Agent's further costs and claims, which result from the stipulations of this Contract or from statutory regulations.

18.3 Insofar as contractual provisions will according to their very nature not be temporarily limited, they shall be applicable beyond the termination of the contractual relationship; this shall also apply to possible legal successors and authorised persons.

### **19 Data Processing for Own Purposes**

19.1 The Client shall grant her consent that the Agent IBM iX Switzerland AG, Vulkanstrasse 106, 8048 Zürich, and IBM iX Berlin GmbH., Chausseestraße 5, D-10115 Berlin (in the following collectively "IBM iX Switzerland AG") will collect, process and use the Client's contact data for the purpose of transacting the contractual relationship as well as for maintaining the business relationship towards the Client. Contact data are business-related contact information, which the Client shall make available to the Agent, in particular names, occupational titles, business addresses, business telephone and fax numbers as well as e-mail addresses of Client's employees or of third parties. Furthermore, the Client shall grant her consent that the contact data shall be made available, processed, and used by IBM Germany, IBM Companies and IBM Business Partners as well as by their respective sub-contractors, within the scope of the within this passage contemplated purposes of use. IBM Companies are the International Business Machines Corporation with headquarter in Armonk, New York (USA) and her affiliated corporate companies.





19.2 For marketing purposes IBM iX Switzerland AG, IBM Germany, IBM Companies, and IBM Business Partners shall be entitled to use themselves or to have the Client's contact data or that of Client's employees used by third parties in order to advertise – per telephone, fax or per e-mail – products and services rendered by IBM. At any time, Client and her employees shall be entitled to object to collecting, processing, and using their contact data for marketing purposes.

19.3 The Client shall grant her consent to transmission of contact data to countries outside the European Economic Community considering the purposes of use contemplated within the scope of the two foregoing passages, subject to the condition that IBM iX Switzerland AG will ensure an adequate data protection level by taking suitable measures. This may occur for instance by concluding standard contractual clauses published by the European Commission or other contractual arrangements released by the pertinent data protection supervisory authority.

#### **20 Follow-up Orders**

The Client may place follow-up orders for service provisions up to the amount of CHF 50,000.00 (fifty thousand Swiss Franc) either verbally, by informal writing or per e-mail. Thus, a contract shall 27. become effective upon the Client's subsequent receipt of the Agent's corresponding order confirmation.

#### **21 Press Releases / References**

For purposes of image cultivation, upon stating references, the Agent herself and as part of the IBM Group shall be entitled to refer to orders, i.e. services to be rendered or already rendered for the Client, on her website or on the IBM website and in IBM documentations, for advertising purposes or for competitions. For her image cultivation, the Agent may

additionally release press statements about the Client's order and the project, after prior consultation with the Client. Furthermore, none of the Parties shall be entitled to use the brand name, company symbol or other logos of the other or of one of her associated companies for advertising or publication without prior written consent by the other Party.

#### **22 Statute of Limitations**

The Parties shall concur that claims derived from this Contract – provided that there is no deviating regulation stipulated under Item 12) (Warranty) of these GTC – shall be subject to a limitation period of three years. Exempted from this, are claims for which a longer time period should be prescribed as mandatory by law.

#### **23 Responsibility**

The Parties shall concur that with exception of payment obligations, none of the Parties will be responsible for non-fulfilment of obligations due to reasons beyond their own sphere of influence.

#### **24 Export and Import Laws**

24.1 The contractual Parties shall be responsible for compliance with all applicable export and import laws and the thus related regulations on embargos and economic sanctions, including such of the United States of America, which prohibit or restrict directly or indirectly the export, re-export, transfer of products, technologies, services or data in specific countries or for specific end-users or end-users. Client shall acknowledge that the Agent may deploy global resources (personnel with temporary residence permits on site as well as personnel at sites worldwide). Client shall not provide Agent nor her associated companies with content subjected to export controls or else requiring export licences.



24.2 Notwithstanding any provisions to the contrary within this Contract, none of the contractual Parties shall be obliged to execute any actions, which will violate applicable law or which will be punishable due to applicable law.

### **25 Disagreements**

Initially, any possible disagreements or complaints shall be solved by the Parties in a cooperative manner. In particular, each Party shall prior to taking legal actions, due to non-fulfilment of a contractual obligation, allow the other Party fulfilment in an appropriate manner.

### **26 Place of Jurisdiction and Place of Fulfilment**

Zurich shall be the place of jurisdiction and the place of fulfilment for all legal disputes resulting directly or indirectly from the contractual relationship.

### **27 Applicable Law**

27.1 The contract, including these General Terms and Conditions, shall be exclusively governed by the laws of Switzerland. Applicability of the UN Convention on Contracts for the International Sale of Goods and the Swiss Private International Law shall be excluded.

27.2 This text shall be governed by and construed in accordance with the laws of Switzerland. The English version of this text serves only for information and is not part of the GTC. Therefore, in the event of any inconsistency between the Swiss German and the English version, only the Swiss German version shall apply.

### **28 Written Form**

Every conclusion of a contract as well as any modifications and amendments thereto shall require the written form. This shall also apply to an understanding made in order to declare this provision as invalid or to modify it. Unless otherwise agreed in the Contract in individual

cases, declarations communicated by the Parties in text form shall satisfy the requirement for written form stipulated within these GTC.

### **29 Partial Ineffectiveness**

If one provision within these General Terms and Conditions should be or become ineffective, the effectiveness of the remaining provisions will not be affected

Status: May 2022



## Special Terms & Conditions “Technology” of IBM iX Switzerland AG.

### T1 Documentation

If Agent should also owe a documentation about the contractual objects, such documentation shall be adapted in terms of content and terminology to a reader adequately equipped with the expert knowledge of the target group of the documentation.

### T2 Rights of Use (Databases, OSS, Software of other Manufacturers)

**T2.1** The Agent shall at all times solely grant non-exclusive rights of use in computer programmes, programme libraries, databases and documents based on document markup languages (HTML, XML, CSS etc.), which will be part of the contractual objects protected in accordance with the Contract and/or in those which will already have been available to the Client prior to conclusion of the Contract, to the extent required for putting the contractual objects to their designated use as specified in the Contract, even if farther-reaching rights of use should be granted on contractual objects that will individually be created for the Client.

**T2.2** Insofar as Agent shall – in the process of providing services – install, incorporate, configure, modify and add open source software (OSS) to the contractual objects, it shall be made clear that these operations will be executed in the name and on behalf of the Client and the Client will have to acquire the licences directly from the respective right holder and that the OSS will not be distributed by IBM iX Switzerland AG, but will represent a provision by the Client.

T2.3 The Agent shall point out to the Client that the Client will acquire rights of use in standard software of other manufacturers based on the contract with the manufacturer. Unless otherwise agreed, the Agent shall not be entitled to pass rights of use concerning this on to the Client.

### T3 Acceptance Technology

**T3.1** The acceptance shall be preceded by the acceptance testing. Unless the procedure for the acceptance testing should be defined otherwise, it will be executed in accordance with the following provisions:

**T3.1.1** The acceptance shall be based on test cases and test data, which will be generated on the basis of the concept and which, with the Agent’s prior approval, will be stipulated as the criteria for the acceptance testing. If no test cases should be coordinated as acceptance criteria, the concept itself will constitute the acceptance criterion.

**T3.1.2** The Client shall provide the resources required for the acceptance testing. During the acceptance testing, the Client shall keep a qualified written record of any defects detected, describing the defect, the test cases/test data as well as the operations from which the defect results, and categorising each defect. No later than upon the expiry of the term of acceptance, shall the Client deliver the written record about the acceptance testing to the Agent, containing either the declaration of acceptance or declaring the justified refusal of acceptance.

**T3.2** In agreement reached between the Parties, any defects detected during the acceptance testing shall be categorized as follows:



### **Category 1: Serious Defects**

The contractual object may not be used. The defect may not be by-passed by organizational means or by any other auxiliary means that are economically reasonable.

### **Category 2: Blocking Defects**

Major impact on functionality and usability. Use of the contractual objects will only be possible to a limited extent. An equivalent function may only be achieved with considerable effort.

### **Category 3: Negligible Defects or Cosmetic Problems**

No significant effects on functionality and usability. Use of the contractual item will not or only slightly be restricted. An equivalent function may be achieved by taking additional work steps. Cosmetic problems will not restrict the use of the contractual object.

**T3.3** As regards to defects of the categories 1) and 2), the Client may refuse acceptance, whereas defects of category 3) will not prevent the Client from her obligation to accept delivery. After acceptance, remaining defects of category 3) shall be remedied within the scope of warranty.

### **T4 Restrictions of Warranty**

**T4.1** The warranty obligation shall be inapplicable if the Client herself should alter the contractual object, in particular source codes of software components, or if she should mandate third parties to do so, and also if the contractual object should be used in a hard and/or software infrastructure unapproved by the Agent, unless the Client should prove that the defect or malfunction is not attributable to the alterations executed by the Client or by third parties and/or to the unapproved application environment.

**T4.2** The Agent shall point out to the Client that upon procurement of external

services, the Client will have to enforce any warranty rights directly against the third party.

### **T5 Hosting**

**T5.1** Insofar as the Agent, acting as a technical service provider, shall store contents and data for the Client and provide the technical infrastructure which will enable third parties to retrieve such data from the Internet or otherwise (hosting), the Client shall be obliged vis-à-vis the Agent not to upload any illegal or otherwise prosecutable – neither in absolute terms nor in relation to individual third parties – contents or data.

**T5.2** In this context, the Client shall be obliged to indemnify and to exempt the Agent from all and any liability and costs, including possible and actual costs of court proceedings – if third parties should file claims against the Agent, because the Client acted illegally by culpably violating her obligations vis-à-vis the Agent pursuant to Item T5.1) (e.g. in relation to copyrights, trademark rights, rights to one's own image, general personal rights, etc.) and thus violated third party rights or acted unlawful or allowed this happening.

The same shall apply for a violation of competitive standards. The Agent shall inform the Client about any claims enforced and – insofar as this should be required and/or possible by law – give her opportunity for defence of the claim enforced. At the same time, the Client shall immediately provide the Agent with complete information available to her about the facts and circumstances, which is the subject matter of the claim.

Status: October 2019



## **Special Terms & Conditions “Communications” of IBM iX Switzerland AG**

### **K1 Production Monitoring**

Within the framework of the correction level, prior to blueprints going into production, the Client shall verify all final artworks, also electronic data, dimensional drawings, models, all texts, including foreign language translations and other creative designs in terms of correct measurements and factual accuracy.

After the Client’s granted approval as regards to the blueprints going into production, the Agent shall be released from any responsibility in terms of the blueprints’ accuracy.

The colors shown in creative designs shall be subject to the limitations of the customary available layout and technical design techniques. Thus, colors of subsequent productions may differ slightly from the draft versions. Despite exercising due diligence as is usual in the ordinary course of business, technically unavoidable deviations from the final product result, as regards to color, size and design of samples, templates, proof prints or of other templates might occur and will not be considered as defects.

At the Client’s request, the Agent shall together with the Client coordinate the color matching of final proofs/print runs, in exchange for an appropriate remuneration according to the time invested.

By way of a correction level, during actual shootings, the Client shall be obliged to review and release motifs filmed or photographed. To this end, the Client shall be obliged to have filming and/or photo sessions attended by members of her staff, who are authorized to take

decisions, or may facilitate a short-term release via remote data transmission. If, despite confirmation, the Client should fail to be represented on set for proofing and releasing purposes, the films recorded or photos taken shall be considered as released, unless the film and photo shoots should have obvious defects rendering performance unacceptable to the Client.

Status: October 2019