1. Scope and Structure

These Purchase Terms ("Terms") stipulate the terms of purchase by IBM Research GmbH ("IBM") with its suppliers ("Supplier"). These Terms supplement a purchase agreement ("PA"). The PA may include a specific agreement document and/or a purchase order ("PO") - also referred to as a work authorization ("WA") - with any specified attachments on products and services. Such documents constitute the sole and exclusive agreement between IBM and Supplier for the products and services in the PA. No other document, including the Supplier's proposal, quotation or acknowledgement form, or Supplier's general terms and conditions will be part of any PA, unless specifically agreed to in writing by IBM. Terms contained in the Supplier's response to, or acknowledgement or acceptance of, the PA, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by IBM. IBM's offer to purchase as provided in the PA may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if the PA is deemed an acceptance by IBM of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of the PA, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer.

In the event of a conflict between the terms of the documents stipulated in paragraph 1, above, the following order of precedence prevails: PO, WA, separate agreement document (PA), annexes, these Terms.

If IBM changes these Terms and such changes affect a current PA, then IBM will inform Supplier thereof with a notice period of thirty (30) days.

2. Prices

If the PA does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling the PA, except as otherwise agreed in writing by IBM.

3. Taxes

Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales, use, transfer of products and services. Furthermore, Supplier will pay any value added tax or any other duties or fees related to any payment by IBM to Supplier for products and/or services provided to IBM under or pursuant to the PA.

If IBM provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and IBM agrees to pay any such tax that is owed legally. Upon IBM's request, Supplier will invoice IBM electronically. Such an invoice must bear an electronic signature as may be required by the applicable taxing authority.

4. Payment Terms / Acceptance

Unless otherwise mandated by local law, the terms of payment are net sixty (60) days net after receipt of Supplier's valid invoice or after receipt of the products or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At IBM's option, IBM may reject products or services that do not comply with IBM's acceptance criteria against either a refund, or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. IBM may return non-conforming products or materials to Supplier at Supplier's expense.

5. Termination

IBM may terminate the PA immediately for cause and with a notice period of fourteen (14) days for convenience. If IBM terminates the PA for convenience, then IBM will pay Supplier for Supplier's actual and reasonable expenses for work that has been completed satisfactorily as of the date of termination, but in no event will such payment exceed the agreed upon prices.

6. Imports and Exports

Supplier is the importer and exporter of record. Supplier will comply with all import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products and services, including, but not limited to, product safety, electromagnetic compatibility, telecommunications, product take-back / recycling and environmental requirements. Upon IBM's request, Supplier will promptly provide all information necessary to export and import products and services, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and/or test results relating to the products or services, and will notify IBM in writing of any changes to the information provided by Supplier to export and import products or services. For products and services that will be imported by IBM, Supplier will provide promptly any requisite information, documentation, certification and/or test results for IBM to comply with applicable import laws and administrative requirements.

7. Packaging / Transportation

Supplier will, unsolicited: (a) comply with all regulations pertaining to country of origin declarations and with all export instructions to IBM; especially the notification of the US export control classification numbering (ECCN) and the declaration of material/services of US embargo countries (see websites „Instructions for cross-border shipments to IBM Corporation" and „Bureau of Industry and Security U.S. Department of Commerce"); (b) comply with all packaging and labelling requirements as set out in the PA; (c) comply with all shipping and transportation routing requirements set out in the PA, and comply with all legal guidelines (Shipping transportation guidelines); (d) not use premium transportation unless specifically authorized by IBM; (e) not include more than one (1) daily shipment for one (1) destination on one (1) bill of lading; and (f) not declare a value or purchase additional insurance on all F.O.B. origin shipments to IBM. The default minimum requirements for sub-sections (a) and (b) are accessible under Instructions for cross-border shipments to IBM Corporation (Instructions for cross-border shipments to IBM Corporation).

8. Risk of Loss / Late Shipment

For Supplier's delivery of products and services, time is of the essence. Generally, delivery dates are expiry dates. If Supplier is likely to, or fails to, deliver on time, IBM is entitled to legal remedies. In particular, IBM may claim for damages and purchase replacements elsewhere. Supplier will be liable for any actual and reasonable costs and damage IBM incurs. Supplier will promptly notify IBM if it is unable to comply with the delivery dates specified in the PA.

Title and risk of loss remain with Supplier until products and services purchased under the PA have been delivered to IBM at the location specified in the PA, and accepted by IBM.

9. Social and Environmental Management System

Supplier represents and warrants that it will comply with the Social and Environmental Management System Supplier Requirements.

10. Representations and Warranties

Supplier represents and warrants that:

a) it has the right to enter into the PA;

b) it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation; and with any law, regulation or ordinance (such as those that implement European Union Directive 2002/95/EC) that govern IBM's distribution of Supplier's products and services as, or as part of, an IBM product or service:

   - labour and employment laws;

   - applicable export and import laws, regulations, orders, and policies, including, but not limited to: (i) securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology (incl. software) in the U.S., or outside the U.S., release or transfer of technology (incl. software) having U.S. content or derived from U.S. origin software or other technology; (ii) being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations; and (iii) agreeing not to transfer to IBM any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");

   - environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to IBM's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, an IBM product;

   - anti-corruption laws; and

   - laws and regulations regarding data privacy and data protection;

c) its execution of the PA will not result in a breach of any other agreements or contracts, to which it is a party;

d) no claim, lien, or action exists or is threatened against Supplier that would interfere with IBM's rights under the PA;

e) the products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;

f) it has disclosed to IBM in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) or services; and it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;

g) all authors have agreed not to assert their moral rights (i.e. personal rights associated with authorship of a work under applicable law) in the products and services, to the extent permitted by law;

h) the products and services are free from defects in construction and design as well as free from defects in material and workmanship, except if they are based solely upon written designs provided by IBM;

i) products are safe for use consistent with and will comply with the representations and warranties, specifications and requirements, including, but not limited to, quality requirements, specified in the PA;

j) products do not contain harmful code and Supplier will not engage in electronic self-help;

k) products and material do not contain (and products and material are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by IBM in writing;

l) products and material are new and do not contain used or reconditioned parts unless IBM agrees otherwise in writing;

m) it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for, or on behalf of, IBM, except to the extent necessary to fulfil the PA pursuant to article 13(2)(a) of the Swiss Federal Act on Data Protection, corresponding to article 6(1)(b) of the European General Data Protection Regulation;

n) it will not offer, promise or make, directly or indirectly any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization;

o) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data, in particular (i) data protection agreements pursuant to art. 10a of the Swiss Federal Act on Data Protection and art. 28 of the European General Data Protection Regulation, and (ii) standard contractual clauses for data protection if and to the extent personal data is processed in countries which are considered inadequate by the Swiss Federal Data Protection and Information Commissioner and/or the European Commission. Among others, without limitation, Supplier will not load any Personal Data provided to Supplier on any laptop computers or any portable storage media that can be removed from Supplier's premises, unless in each case of portable storage media (i) such data has been encrypted, and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage. Supplier will report to IBM any breaches of security of Personal Data immediately after discovery ("Security Incident"). Supplier will cooperate fully with IBM in investigating any Security Incidents. Supplier will cooperate fully with IBM's requests for access to, correction of, and destruction of Personal Data in Supplier's possession. Finally, it will comply with all instructions or other requirements provided or issued by IBM from time to time relating to Personal Data;

p) it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by IBM or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations;

q) it will not, nor will it authorize or permit supplier personnel to, disclose, export or re-export any of IBM's information, or any process, or product that is produced under the PA, without prior notification and compliance with all applicable federal, state (e.g. canton) and local laws, regulations and ordinances, including U.S. export control regulations.

11. Intellectual Property

Supplier grants IBM (including IBM's parent company, subsidiaries, or other related legal entities ("Affiliates")) all rights and licenses (e.g. articles 9, 10, 11, 33, 33a and 36 of the Swiss Copyright Act) necessary for IBM and its Affiliates to use, assign, pass-through, and sell the products and services and to exercise the rights granted under the PA.

12. Tangible Property

Except for products and services consisting of software (which is licensed as provided under section 11 (Intellectual Property) above), all work product and services developed by Supplier and provided to IBM under the PA are and shall remain the personal property of IBM.

If IBM provides equipment or tools for work under the PA, Supplier will use them only for that purpose. Supplier is responsible for its own equipment and tools.

13. Indemnification

Supplier represents and warrants to defend, hold harmless, and indemnify IBM and its Affiliates from any claim (including without limitation costs, expenses and attorney's fees) arising from: (a) claims that any product or service infringes any intellectual property rights, (b) the failure of Supplier to comply with its representations, warranties and obligations under the PA or (c) a Security Incident. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) defend, hold harmless, and indemnify IBM regarding the rights granted in the PA; (ii) obtain for IBM the rights granted under the PA; (iii) modify the product or service so it is non-infringing and in compliance with the PA; (iv) replace the products or services with non-infringing ones that comply with the PA; or (v) accept the return or cancellation of the infringing product or service, and refund any amount paid.

14. Limitation of Liability

To the extent permitted by local law, in no event will IBM or its Affiliates or their subcontractors be liable for any damage occurring under, or in connection with, any PA.

15. Assignment / Subcontracting

Supplier will not assign its rights or subcontract its duties without IBM's written consent.

IBM has announced that it will transfer its Managed Infrastructure Services business ("Business") to another entity ("NewCo"). The date of such transfer is referred to as the "Transfer Effective Date". Supplier hereby agrees, notwithstanding anything to the contrary herein, that all or part of IBM's **rights, title and interests** as well as **duties, liabilities and obligations** under the PA and these Terms, respectively, related to the Business may **be freely assigned, novated (i.e. debt assumption) and transferred to Newco** as of the Transfer Effective Date without further consent from Supplier provided NewCo irrevocably **accepts such rights, title and interests** as well as **assumes such duties, liabilities and obligations**. As of the Transfer Effective Date, Supplier hereby releases IBM from all such duties, liabilities and obligations under the PA and these Terms. At least 30 days prior to the Transfer Effective Date, IBM shall provide Supplier with a notice identifying NewCo as entity and specifying the Transfer Effective Date, the rights, title and interests as well as duties, liabilities and obligations that will be assigned, novated (i.e. debt assumption) and transferred to NewCo. The PA and these Terms shall remain in effect between IBM and Supplier for all rights, title and interests as well as duties, liabilities and obligations not related to the Business, and will also discretely apply between NewCo and Supplier and to their performance related to the Business as if the PA and these Terms were executed between NewCo and Supplier.

16. Exchange of Information

All exchanges of information between the parties pursuant to the PA will be considered non-confidential. If the parties intend to exchange confidential information, such exchange shall be made under a separate written confidentiality agreement.

For any Personal Data of the Supplier or relating to Supplier's personnel or subcontractors or other legal units (as the case may be) that Supplier provides to IBM, Supplier herewith consents to the IBM Privacy Statement and will obtain with reference to the IBM Privacy Statement the informed consent of such personnel to release the Personal Data to IBM; and to allow IBM to process such information and Personal Data on a worldwide basis among IBM and its Affiliates in connection with the PA.

17. Audit

IBM may, on reasonable notice to Supplier, audit Supplier's books, ledgers, supporting records/documentation and related procedures and controls, relating to any charges paid by IBM in connection with the PA.

18. Ethical Dealings

Supplier represents and warrants being familiar and strictly complying with all laws and regulations on bribery, corruption, and prohibited business practices.

19. Record Keeping

All accounting records in connection with the PA will be maintained in accordance with generally accepted accounting principles and Supplier shall store the relevant business, technical and accounting records subject to applicable law.

20. Supplier / Auxiliary Persons

Supplier shall ensure that each auxiliary person, whom it is authorized to retain under the PA, will comply with all of Supplier's obligations and responsibilities under the PA.

21. Insurance

Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name IBM as a loss payee or additional insured, as appropriate.

22. Applicable Law / Venue

The PA and these Terms is subject to substantive **Swiss law**. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Disputes arising under, or in connection with, the PA and these Terms shall be **exclusively** subject to the jurisdiction of the **competent court of the city of Zurich**.

23. General

Any reproduction of the PA by reliable means will be considered an original of the PA.

Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to the PA must be commenced no later than two (2) years from the date on which the cause of action arose.

No modification, amendment, supplement to, or waiver of the PA by IBM shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing the PA.

IBM's failure to exercise any right hereunder shall not operate as a waiver thereof.

Both shrink-wrap and click-wrap licenses accompanying any product consisting of software and online terms of use or terms of service relating to services provided online are null and void, and these Terms and the PA prevail.

Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes or work permits.

Supplier shall not use the name or trademarks of IBM or its Affiliates or refer to or identify IBM or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of IBM.

Should the hyperlinks embedded in sections 7, 9 and 16 not operate correctly, then the following web addresses should be used.

- Instructions for cross-border shipments to IBM Corporation: https://www.ibm.com/procurement/shtrg

- Shipping transportation guidelines: https://www.ibm.com/procurement/shtrg

- Bureau of Industry and Security U.S. Department of Commerce: https://www.bis.doc.gov/

- Social and environmental management system supplier requirements: https://www.ibm.com/procurement/sems

- IBM Privacy Statement: https://www.ibm.com/privacy

Supplier can order such information from IBM in **hardcopy**, if no online access is possible.

Additional provisions relating to Federal and public sector

24. Compliance with Laws Unique to Government Contracts

Supplier represents and warrants that it and its auxiliary persons working under the PA will comply, and assist IBM in complying with, the laws unique to performing on government contracts. Supplier also agrees not to offer or give gifts on behalf of IBM to third parties, including without limitation government employees and officials.

25. Notification of Debarment / Suspension

By acceptance of the PA either in writing or by performance, Supplier certifies that as of the date of issuance of the PA neither Supplier, nor any of Supplier's principals, is debarred, suspended, or proposed for debarment by the federal, state or local government. Furthermore, Supplier shall provide immediate written notice to IBM in the event that during the performance of the PA Supplier or any of Supplier's principals is debarred, suspended, or proposed for debarment by the federal, state or local government.

26. Conflict of Interest

In the performance of the PA, it is Supplier's responsibility to avoid: (1) any actual or apparent conflict between Supplier's duties or obligations to other parties, including the federal, state or local government, and such duties and obligations assumed under the PA, and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of the PA, Supplier shall not make or participate in any marketing calls or contacts with any government authority or others which might create the possibility or appearance of a conflict of interest or an actual conflict of interest. Supplier also represents and warrants that, if subsequent to the issuance of the PA, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship created or intended to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the federal, state or local government, Supplier shall immediately notify IBM, and IBM shall have the right, at its sole discretion, to terminate the PA on notice. Upon exercise of such right of termination, IBM's only obligation to Supplier shall be to reimburse Supplier for products and services satisfactorily completed as of the date of termination.

27. Additional Representations and Warranties

Supplier represents and warrants:

i.   any information it discloses to IBM does not violate any law, regulation or ordinance of any federal, state or local governmental authority regarding the integrity of the procurement process and has not been obtained from any government classified documents or other classified information sources;

ii. it is not now employed by the federal or any other government, and further, it is not consulting with any agency or other representative of the federal, state or local government, or with any other third party, on matters which conflict or appear to conflict with the subject matter of the PA;

iii.   a) no individual who is a former officer or employee of the federal, state or local government shall be employed or compensated for products and services rendered under the PA within one (1) year after conveying a benefit to IBM; b) it shall pay no compensation hereunder to any covered department and c) it shall immediately, at IBM's request and sole discretion, remove any specified employee(s), subcontractor(s) and/or agent(s) of Suppliers from IBM's premises, and agree that they will not be reassigned to any IBM premises under the PA;

iv.   it will require that each individual working for Supplier hereunder obtains a copy of IBM's "Business Conduct Guidelines" and "Public Sector Guidelines for Switzerland" (collectively, the "Guidelines"), and Supplier and Supplier's auxiliary persons working under the PA will review the Guidelines and assist IBM in complying with the Guidelines;

v.   a) neither Supplier, nor any of Supplier's auxiliary persons or others whom Supplier will employ (as authorized by IBM), will make any communication with any official with the intent to influence, or attempt to influence, the award of contracts to IBM; b) it will not engage in lobbying for IBM; c) it, and all of its employees or others engaged by Supplier are authorized by IBM to perform products and services under the PA.

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