

# ORDER DOCUMENT

**IBM Česká republika**, spol. s r.o. with registered seat at V Parku 2294/4, 148 00 Praha 4 – Chodov, IČO:14890992, DIČ: CZ14890992, company registered in the Commercial register maintained by Municipal Court in Prague, insert no. C692, represented by: Petr Havlík or Martin Kotrus, Executive Directors

(“IBM”)

and

**Masarykův onkologický ústav**, with registered seat at: Žlutý kopec 543/7, 656 53 Brno IČO: 00209805, DIČ: CZ00209805

represented by: prof. MUDr. Jan Žaloudík, CSc., director

(“you,” “your,” “Client”)

enter into this Order Document and becomes effective on the date (“**Effective Date**”) when it is signed by both parties and also published in the register of contracts (“**Register**”), according to the Act no. 340/2015 Coll., on special conditions for the effectiveness of some contracts, publication of these contracts and register of contracts (hereinafter as “**Register of Contracts Act**”). This Order Document has an estimated start date of 11/03/2019, under the IBM Client Relationship Agreement, version 03/2018 (“**CRA**”) that is referenced in the signature block below and together with the incorporated Appendices is collectively referred to as the “**Agreement**”. All references to the Order Document herein are deemed to include the Agreement. This Order Document is a Transaction Document for purposes of the Agreement and becomes effective when signed by both parties and published in Register of contracts according to Register of Contracts Act.

Client notifies IBM and IBM acknowledges that the Client is a legal entity referred to in Section 2 para. 1 point c) of the Register of Contracts Act and according to the Register of Contracts Act private law contracts concluded with Client are subject to the publication in the register of contracts, a public administration information system administered by the Ministry of the Interior of the Czech Republic. Parties hereby agree with publication of present Agreement in the register of contracts by Client.

The following are incorporated in and made part of this Order Document:

- Appendix A: IBM Cloud Service Description: IBM Watson for Oncology
- Appendix B: IBM Watson for Oncology Terms of Use for End Users
- Appendix C: IBM Cloud Service Description: Clinical Trial Matching
- Appendix D: Amendment Template
- Appendix E: Statement of Work for Clinical Adoption of IBM Clinical Trial Matching and Watson for Oncology
- Appendix F: DPA Exhibit for Reading Client Personal Data for CTM and WFO
- Appendix G: IBM Client Relationship Agreement, version 03/2018

By signing this Order Document below, Client is ordering:

Cloud Services (“**Cloud Services**,” “**Cloud Service**”) consisting of IBM Watson for Oncology (“**Wfo**,” “**WFO**”) and IBM Watson Clinical Trial Matching (“**CTM**”) as set forth in the applicable IBM Cloud Service Description Document (“**Service Description**,” “**Service Descriptions**”) and IBM Watson for Oncology Terms of Use for End Users (“**End User Terms**”) as incorporated in this Order Document;

and;

Services (“**Services**,” “**Professional Services**”) set forth in the incorporated Statement of Work (“**SOW**”).

To the extent there is any contradiction, inconsistency or ambiguity between the terms of this Order Document, the Service Description, Statement of Work, End User Terms and the CRA, the order of precedence with respect:

a) to Professional Services is: first, this Order Document, second, the SOW, and finally the CRA; and b) to Cloud Services is: first, the Order Document, second, the applicable Service Description and End User Terms and finally the CRA. The Order Document, the SOW, the applicable Services Description, End User Terms and the CRA, are the complete agreement regarding the project contemplated herein, and shall replace any prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and IBM regarding the Cloud Services and Services.

Each party accepts the terms of this Order Document by signing this Order Document by hand or, where recognised by law, electronically. Any changes to this Order Document must be set forth in an amendment hereto signed by both parties. The form of such amendment shall be as provided in Appendix D: Amendment Template.

Any capitalized but undefined terms contained in this Order Document have the meaning set forth in the Service Description or the CRA.

## 1. Watson Cloud Service Entitlements

Client may grant access to the Cloud Services specifically WfO and CTM, as permitted by the Agreement. Client may only provide access to the Cloud Services, as permitted by the Agreement, up to the Annual Patient and Annual Authorized User Entitlements listed in both Table 1 and Table 2.

Concerning the WfO Cloud Service Appendix A and B attached hereto are License and Product Terms per the Agreement. Client shall ensure that the appropriate terms, including but not limited to the License and Product Terms are provided to the End User in a format sufficient to create an enforceable agreement under applicable law before use by the End User.

## 2. Charges

### 2.1 CTM Cloud Services

Client agrees to acquire access to CTM Cloud Services in accordance with the terms of the Agreement, for a total charge of [REDACTED] (VAT excluded). CTM Cloud Service Charges for the Cloud Services entitlements are set forth in Table 1 below.

**TABLE 1 – Watson Cloud Service Charges for CTM**

Patient Entitlement	Authorized User Entitlement	Duration	CTM Cloud Service Charges
CTM - Up to 200 patients	Up to 5 users	6 months	[REDACTED] CZK
Total Base Cloud Services Charges			[REDACTED] CZK

\*see Appendix A for definition of Patient.

The CTM Cloud Services Charges set forth in Table 1 above will be paid in advance during the Term according to the schedule in Table 4, and in accordance with Section 3 (Invoicing).

The following charges apply for the CTM Cloud Service ordered:

- The minimum total fee for the CTM Cloud Service shall be paid in amounts as shown in Table 4 below in advance of each subscription year for the Term of this Order Document.
- Patient overage fee at a rate of [REDACTED] CZK (includes penalty charge) applies per month of subscription, pro rata per additional patient for upto one hundred additional (100) patients, due in arrears at the end of the Term defined in Section 5, for patients in excess of the Patient Entitlement ("Patient Overage Fee").
- A user overage fee of [REDACTED] CZK per additional user in excess of the Authorized User Entitlement plus any additional Authorized Users granted, is due monthly in arrears.
- All fee's and charges for CTM for the duration and entitlements given in this Order Document are introductory and will expire upon completion of the duration of CTM given in Table 1.
- All charges are before all applicable taxes including but not limited to VAT. If Client provides a direct pay certificate, certification of an exemption from tax or reduced rate of tax imposed by an applicable taxing authority, then IBM agrees not to invoice or pay any such tax unless and until the applicable taxing authority assesses such tax, at which time IBM shall invoice and Client agrees to pay any such tax that is legally owed.

### 2.2 WfO Cloud Services

Client agrees to acquire access to WfO Cloud Services in accordance with the terms of the Agreement, for a total charge of [REDACTED] CZK (VAT excluded). WfO Cloud Service Charges for the Cloud Services entitlements are set forth in Table 2 below.

**TABLE 2 – Watson Cloud Service Charges for WfO**

Patient Entitlement	Authorized User Entitlement	Duration	WfO Cloud Service Charges
WfO - Up to 200 patients	Up to 5 users	6 months	████████ CZK
<b>Total Base Cloud Services Charges</b>			<b>████████ CZK</b>

The WfO Cloud Services Charges set forth in Table 2 above will be paid in advance during the Term according to the schedule in Table 4, and in accordance with Section 3 (Invoicing).

The following charges apply for the WfO Cloud Service ordered:

- f. The minimum total fee for the WfO Cloud Service shall be paid in amounts as shown in Table 2 below in advance of each subscription year for the Term of this Order Document.
- g. Patient overage fee at a rate of ██████████ CZK (includes penalty charge) applies per month of subscription, pro rata per additional patient for upto one hundred additional (100) patients, due in arrears at the end of the Term defined in Section 5, for patients in excess of the Patient Entitlement ("Patient Overage Fee").
- h. A user overage fee of ██████████ CZK per additional user in excess of the Authorized User Entitlement plus any additional Authorized Users granted, is due monthly in arrears.
- i. All fee's and charges for WfO for the duration and entitlements given in this Order Document are introductory and will expire upon completion of the duration of WfO given in Table 2.
- j. All charges are before all applicable taxes including but not limited to VAT. If Client provides a direct pay certificate, certification of an exemption from tax or reduced rate of tax imposed by an applicable taxing authority, then IBM agrees not to invoice or pay any such tax unless and until the applicable taxing authority assesses such tax, at which time IBM shall invoice and Client agrees to pay any such tax that is legally owed.

## 2.3 Clinical Adoption Professional Service

IBM will provide Clinical Adoption Services, as described in Appendix E of this Order Document, for the period defined in Table 3 below.

**TABLE 3 – Clinical Adoption Services Charge**

Clinical Adoption Service Entitlements (See Appendix E SOW below for detail)	Total Clinical Adoption Services Charge
<b>Clinical Adoption Services</b> <b>-Up to 160 hours within a 7 month period</b>	████████ CZK

The Clinical Adoption Service Charge is in addition to the Base Cloud Service Charge for CTM and WfO as given in Table 1 and Table 2.

In addition to the Clinical Adoption Service Charge, IBM will be entitled to travel and other expenses to be paid by Client as set forth in Section 2.4 below.

## 2.4 Travel

- a. Travel expenses for Clinical Adoption Services are estimated to be ██████████ CZK to fund five (5) trips to Site. You will not be billed for travel and living costs (including actual transportation and lodging, and per diem meal expense) for any on-site work associated with the Clinical Adoption Services. IBM will not provide on-site services for Clinical Adoption

Services after either the estimate limit or trips limit is reached, unless Client chooses to fund the additional travel. Incremental travel expenses would be charged as per IBM travel policies as communicated to and approved by Client.

- b. No other travel costs are included under this Order Document.

### 3. Invoicing

IBM will invoice you for the charges as set forth in Table 4 below. In addition, IBM will add any custom, duty, tax (including withholding tax), levy or fee imposed by any authority resulting from your purchase or use of this Cloud Service.

IBM will invoice the Extended Cloud Service Charge as Cloud Service Charges for CTM and WFO and Clinical Adoption Service Charge in advance, in accordance with Table 4.

**Table 4 – Charges**

Summary Charge Description	Summary from Table	Date of Invoicing	Extended Cloud Service Charge
CTM Cloud Service Charge	#1	Upon Effective Date of the Order Document	██████████ CZK
WfO Cloud Service Charge	#2	Upon the agreed start date for the WFO Cloud Service	██████████ CZK
Clinical Adoption Service Charge	#3	Upon Effective Date of the Order Document	██████████ CZK
<b>Total Extended Cloud Service Charge</b>			<b>907,786.00 CZK</b>

IBM will charge for any additional Patients and additional Authorized Users on a monthly basis, in arrears, as described in Section 2.1. and Section 2.2.

Payments will be made by Client to IBM without any deduction except for withholding tax if required by local tax laws on the payments. In the case where Client withholds the applicable tax from payments to IBM, Client will remit the withholding tax to relevant tax authority and promptly provide IBM with official tax certificate for the tax recovery.

The following charges and invoice process applies:

- Amounts are due** upon receipt of the invoice and payable within thirty (30) days of the invoice date to an account specified by IBM. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties. In the event of late payment, IBM reserves the right to immediately charge a late payment interest calculated based on applicable law and, after 30 calendar days, suspend the provision of Cloud Services. You do not have to pay any amount disputed in good faith while it is being investigated, but you remain obligated to pay any amount not in dispute.
- PO Driven Client.** If your Client/ client number indicates that you require a Purchase Order (PO) for payment purposes, the Cloud Service under this Order Document will not be made available to you until a PO or a PO waiver for the charges specified in this Order Document received. A PO waiver may be sent in hard copy or e-mail, but must come from an authorized officer or your purchasing agent. Any different or added terms contained in any PO or other ordering documents that might be exchanged in relation to activities under this Transaction Document will not be applicable or of any effect. At its sole discretion, IBM may elect to make the Cloud Service available to you after this Transaction Document is executed, but prior to receipt of PO or PO waiver, on a limited, case-by-case basis.
- Derived Benefit Location.** Where applicable, taxes are based upon the location(s) Client identifies as receiving benefit of the Cloud Service. IBM will apply taxes based upon the business address listed when ordering a Cloud Service as the primary benefit location unless Client

provides additional information to IBM. Client is responsible for keeping such information current and providing any changes to IBM.

- d. **Change of Scope.** If during the Term there is a change in law or regulation, for example without limitation, privacy laws of the United States that materially affect IBM's ability to deliver the WO Service Description at the stated charges, IBM reserves the right to modify the charges. If Client disagrees on the modification, Client may terminate the agreement with a prior written notice of 90 days. The said modification shall not come into force during this period.
- e. **Payment Compliance.** Your payment obligation to IBM under the Agreement and the Order Documents are independent of any payment you may or may not receive from any entity that contracts to receive the Cloud Service from you, either directly or through re-sale; any nonpayment by such an entity shall not relieve you of your payment obligation to IBM under this Agreement or the Order Documents.

#### 4. Termination

Either party may terminate this Agreement for material breach caused by the other party by giving the other party not less than thirty (30) business days written notice. Upon termination for material breach caused by the Client, you will pay the following amounts to IBM: i) the charges for Services IBM provides through termination, and all materials IBM has prepared through termination, whether or not completed or delivered, and ii) if you terminate, all costs and expenses IBM incurs in terminating the Services. Upon termination for material breach caused by IBM, IBM shall be obliged to return to the Client part of the paid charges for Services proportionally for the period that the Client has not an opportunity to use the Services due to its premature cancellation (e.g. 1/3 of paid charges for 1 month of not using WfO services which are ordered for period of 3 months).

#### 5. Term and Renewal Options

The term of the Cloud Service subscription for CTM and WFO begins when IBM notifies the Client that the Cloud Service is available for use ("Cloud Service Start Date"). The total Term of the Cloud Service Subscription is twelve (12) months, unless earlier terminated in accordance with the terms of this Order Document.

The estimated Cloud Service Start Date for CTM is 01/04/2019. At that time CTM will be available to the Client for a duration of six (6) months. WFO Services will be available for a duration of six (6) months and its Start Date will be mutually agreed to between the Client and IBM.

The Cloud Services do not renew automatically. You must place a new order to continue access to CTM and WFO before the end of each applicable duration.

#### 6. Data Processing Protection

The Data Processing and Protection data sheets (Data Sheet) provides information specific to the Cloud Services CTM and WFO regarding the type of Content enabled to be processed, the processing activities involved, the data protection features, and specifics on retention and return of Content. A link to the applicable Data Sheet can be found in the Service Description.

Client is responsible to take necessary actions to order, enable, or use available data protection features for a Cloud Service and accepts responsibility for use of the Cloud Services if Client fails to take such actions, including meeting any data protection or other legal requirements regarding Content.

In accordance with European General Data Protection Regulation (EU/2016/679) (GDPR) IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and DPA Exhibit(s) apply and are referenced in as part of the Agreement. The applicable Data Sheet(s) for the Cloud Services will serve as the DPA Exhibit(s). If the DPA applies, IBM's obligation to provide notice of changes to Sub-processors and Client's right to object to such changes will apply as set out in DPA.

In addition, IBM will process Client Personal Data for the Services, as described in the SOW and as supplemented and specified by DPA Exhibit Appendix C: DPA Exhibit for Reading of Client Personal Data in delivering Services for CTM and WFO and is incorporated into this Agreement.

#### 7. Governing Law and Jurisdiction

Both parties agree that the Order Document and all transaction arising out of or in connection therewith are governed by the Laws of the Czech Republic.

## 9. Final and closing provisions

Each Party accepts the terms of this Order Document by signing this Order Document (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, please return a copy of this document to the E-mail address shown below. Services comprises of both Cloud Services and any Professional Services set forth herein

Agreed to:

**Masarykův onkologický ústav**

By:

\_\_\_\_\_  
Authorized signature

editel

Title: \_\_\_\_\_

prof. MUDr. Jan Žaloudík, CSc.

Name (type or print): \_\_\_\_\_

Date: 4. 3. 2019  
\_\_\_\_\_

Customer Number: 172652

Client address: Masarykův onkologický ústav, Žlutý kopec  
543/7, 656 53 Brno

Agreed to:

**IBM Česká Republika spol. s.r.o**

By:

\_\_\_\_\_  
Authorized signature

jednatel

Title: \_\_\_\_\_

Martin Kotrus

Name (type or print): \_\_\_\_\_

Date: 25. 2. 2019  
\_\_\_\_\_

Agreement Name: Client Relationship Agreement –  
located at  
<https://www.ibm.com/support/customer/cz/cs/documents.html>

and incorporated in this Order Document as Appendix G

Agreement Number: Client Relationship Agreement  
Z126-6548-CZ-8 10-2018 to be signed concurrently with  
this Order Document

IBM Address: IBM Česká Republika, spol.  
s.r.o., V Parku 2294/4, 148 00 Praha 4 –  
Chodov.

Please sign and return to IBM to place your order for Cloud Services and Clinical Adoption Professional Services.  
IBM accepts your order upon signing above.

This offer will expire on 28/02/2019 unless extended in writing by IBM.

## Appendix A: IBM Cloud Service Description: IBM Watson for Oncology

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## APPENDIX B: IBM WATSON™ FOR ONCOLOGY TERMS OF USE FOR END USERS

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**Appendix C: IBM Cloud Service Description: IBM Watson for Clinical Trial Matching**

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## Appendix D: AMENDMENT TEMPLATE

This Amendment modifies or supplements the terms of the Order Document by and between Masarykův onkologický ústav ("Client") and IBM Česká republika, spol. s r.o. ("IBM") with an effective date of \_\_\_\_\_. This Amendment is effective as of \_\_\_\_\_. Any capitalized terms not defined herein will have the same meaning as set forth in the Order Document or the Services Description. If there is a conflict between this Amendment and the Order Document, this Amendment will prevail.

*{insert terms that are being modified, added or deleted}*

**Agreed to:**

**Masarykův onkologický ústav**

By \_\_\_\_\_

Authorized signature

**Agreed to:**

**IBM Česká republika, spol. s r.o.**

By \_\_\_\_\_

Authorized signature

Title:

Name (type or print):

Date:

Client number:

Client address:

Masarykův onkologický ústav, Žlutý kopec 543/7,  
656 53 Brno

Title:

Name (type or print):

Date:

Agreement number:

Amendment number:

IBM address:

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Each of us agrees that the complete agreement, which replaces any prior oral or written communications between us regarding this transaction, consists of 1) this Amendment, 2) the Order Document, 3) the Services Description and 4) the CSA specified below. In entering into this Amendment, no party is relying upon any representation made by or on behalf of IBM that is not specified in this Amendment, the Order Document, the Services Description or the CSA.

**APPENDIX E: IBM Statement of Work for  
Clinical Adoption of Clinical Trial Matching and Watson for Oncology  
Prepared for the Masaryk Memorial Cancer Institute (MMCI)**

This Statement of Work ("SOW") describes the work to be provided by IBM Česká republika, spol. s r.o., with registered seat at V Parku 2294/4, 148 00 Praha 4 – Chodov, IČO:14890992, DIČ: CZ14890992, company registered in the Commercial register maintained by Municipal Court in Prague, insert no. C692 (the "Services") to Masarykův onkologický ústav, with registered seat at: Žlutý kopec 543/7, 656 53 Brno IČO: 00209805, DIČ: CZ00209805 ("Client", also called "Customer", "you" and "your") under the terms and conditions of the IBM Client Relationship Agreement ("Agreement"), and is effective on the date of last signature below. In addition, your responsibilities are listed in the SOW.

The following are incorporated and made part of this SOW:

- Appendix A: Project Procedures
- Appendix B: Deliverable Materials
- Appendix C: Sample Project Change Request

This SOW is the Transaction Document for purposes of the CRA. To the extent there is any contradiction, inconsistency or ambiguity between the terms of this SOW and the Agreement or any other document, including a Purchase Order, this SOW will govern.

Each party accepts the terms of this SOW by signing this SOW (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, please return a copy of this document to the E-mail address shown below. Any reproduction of this SOW made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and all Services ordered under this SOW are subject to it.

The estimated total services charges for this SOW are defined in the Order Document.

## **1. IBM Statement of Work**

### **1.1 Project Scope**

Under this project IBM will provide Services for the Clinical Adoption of the Cloud Services CTM and WFO.

#### **1.1.1 Key Conditions**

This SOW and IBM's estimates are based on the Project Scope, Section 1.3, Section 1.4 and the following key conditions. Deviations that arise during the proposed project will be managed through the Project Change Control Procedure, and may result in adjustments to the Project Scope, Estimated Schedule, Charges, and other terms.

1. All Client access to the Cloud Services will be provided under the entitlements set forth in the Order Document. This SOW attachment to this Order Document is for IBM Professional Services only;
2. All patient data and user requests to CTM and WFO will be through a secured network channel setup between a forward proxy server in Client's network and a security gateway within IBM's network; CTM and WFO application will accept all requests coming in through this secured channel and will not perform any additional authentication or authorization of requests;
3. The contiguous delivery of Clinical Adoption Services is dependent upon the Cloud Service Start Date and the WFO Cloud Service Date being realized as estimated. Deviations that arise during the proposed project will be managed through the Project Change Control Procedure;
4. All Client Content will be input manually by the Client into the Cloud Services and any Protected Health Information anonymized.
5. It is planned that hosting of CTM will be from within the United States of America and hosting of WFO from within Germany.
6. There is no requirement to launch in context of each other either of the CTM or WFO applications. As such no data is required to be shared between each other.

### **1.2 Facilities and Hours of Coverage**

IBM will:

- a. perform the work remotely, except for any project-related activity which IBM determines would be best performed or at your facility in Brno, Czech republic. provide the Services under this SOW during normal business hours, 9:00 AM to 5:00 PM, local time, Monday through Friday, except holidays. If necessary, you will provide after-hours access to your facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.

### **1.3 Activities**

Under this SOW, IBM and Client will undertake the following activities:

#### **Activity 1 - Clinical Adoption Services**

In this activity, IBM will provide Clinical Adoption Services for a period of seven (7) months post production go-live of the CTM Cloud Service (also referred to as the Cloud Service Start Date in the Order Document) or up to a maximum of one hundred and sixty (160) hours total. Clinical Adoption Services will be executed in two phases aligned to the go-live of the CTM Cloud Service and the WFO Cloud Service with hours allocated accordingly.

IBM will provide a clinical consultant in a part-time capacity to assist Client with the clinical adoption of the Cloud Services. The purpose of this activity is to:

- enable key Client clinicians in their use of the Cloud Services and supporting colleagues with their adoption; and

- develop an approach that can be used by Client in governing changes associated with the Cloud Services

### **IBM Responsibilities**

IBM will:

- a. create change management plan (training, communication, metrics);
- b. support peer-to-peer training;
- c. provide go-live support; and
- d. perform follow up sessions at 30 and 60-day intervals post production go-live for CTM
- e. perform one follow up session at a 30-day interval post production go-live for WFO

### **Client Responsibilities**

Client will:

- a. identify Client resources to participate in Clinical Adoption including a lead Clinician for CTM and WFO

### **Items to be Delivered:**

- None

### **Completion Criteria:**

This activity will be considered complete when IBM has provided the Items to be Delivered stated above.

## **Activity 2 - Project Management**

IBM and Client will provide project management for their respective responsibilities in this Project. The purpose of this activity is to provide technical direction and control of Project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity.

### **IBM Responsibilities**

The IBM Project Manager will:

- a. review the SOW and the contractual responsibilities of both parties with the Client Project Manager;
- b. maintain Project communications and governance through the Client Project Manager;
- c. assist the Client Project Manager to prepare and maintain the Project plan for Client performance of this SOW, which will include Client and IBM activities, tasks, assignments, milestones and estimates;
- d. review the IBM standard invoice format and billing procedure to be used on the Project with the Client Project Manager and Program Manager;
- e. work with the Client Project Manager to address and resolve deviations from the Project plan;
- f. participate in regularly scheduled Project status meetings;
- g. coordinate and manage the technical activities of IBM Project personnel; and
- h. administer the Project Change Control Procedure with the Client Project Manager.

### **Client Responsibilities**

Client will assign and Project Manager, and the Client Project Manager will have the authority to act on behalf of Client in all matters regarding this Project and will:

- a. manage your personnel and responsibilities for this project;
- b. serve as the interface between IBM and all your departments participating in the project;
- c. administer the Project Change Control Procedure with the IBM Project Manager;



- d. participate in project status meetings;
- e. obtain and provide information, data, and decisions within three business days of IBM's request unless you and IBM agree in writing to a different response time;
- f. resolve deviations from the estimated schedule, which may be caused by you;
- g. help resolve project issues and escalate issues within your organization, as necessary;
- h. review with the IBM Project Manager any of your invoice or billing requirements. Such requirements that deviate from IBM's standard invoice format or billing procedures may have an effect on price, and will be managed through the Project Change Control Procedure in Appendix A-1; and

**Items to be delivered:**

None.

**Completion Criteria:**

This is an ongoing activity which will be considered complete at the end of the Services.

#### **1.4 Client Additional Responsibilities**

In addition to the other specific Client responsibilities set forth in the Agreement and this SOW, Client will:

- a. provide safe access, suitable office space, supplies, furniture, high speed connectivity to the Internet, and other facilities needed by IBM personnel while working at Client's location;
- b. supply all prerequisite hardware and software to be used during the performance of this SOW. This does not include any hardware or software normally used by IBM consultants in the performance of their day-to-day responsibilities with IBM;
- c. allow IBM to cite your company name and the general nature of the Services IBM performed for you to IBM's other clients and prospective clients as an indication of IBM's experience, unless both you and IBM specifically agree otherwise in writing;
- d. if making available any facilities, software, hardware or other resources in connection with IBM's performance of Services, obtain at no cost to IBM any licenses or approvals related to these resources that may be necessary for IBM to perform the Services. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals;
- e. be responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which IBM will have access during the Services, including applicable data privacy, export, import laws and regulations, and product safety and regulatory compliance for non-IBM products including those recommended by IBM. You are solely responsible for obtaining advice of legal counsel as to the compliance with such laws, and regulations; and
- f. be responsible for any data and the content of any database, the selection and implementation of procedures and controls regarding its access and, use, backup and recovery and security of the stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel.

#### **1.5 Items to be Delivered by IBM**

Client will own the copyright in works of authorship that IBM develops for and delivers to Client under a SOW ("Project Materials"). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, IBM Content, IBM Watson and related offerings, and any modifications or enhancements of such works made under the SOW ("Existing Works"). Some Existing Works are subject to a separate license agreement ("Existing Licensed Works"). An IBM offering is an example of an Existing Licensed Work, and if delivered under an SOW, is subject to the offering's terms.

Unless separate license terms are provided, IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, and perform

Existing Works that are not Existing Licensed Works only to the extent necessary to utilize IBM Services and Project Materials pursuant to Agreement and SOW. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials. Notwithstanding anything in the Agreement to the contrary, IBM is the exclusive owner of IBM Watson. Client's license to IBM Watson, if any, would be under a separate Cloud Service subscription or license agreement. Client may suggest that IBM enhance IBM Watson or IBM's other offerings or services ("Feedback"). Client is under no obligation to provide Feedback and IBM is free to use all Feedback that Client provides.

## **1.6 Completion Criteria**

IBM will have fulfilled its obligations under this SOW when one of the following first occurs:

- a. IBM accomplishes the activities set forth in the "IBM Responsibilities" sections of section 1.5 and delivers to Client the items described in Appendix B, if any; or
- b. Client or IBM terminates the project in accordance with the provisions of this SOW or the Agreement.

## **1.7 Change Request**

Any Change Request will be handled in accordance with Appendix A-1.

## **1.8 Estimated Schedule**

The Services will be provided after mutual contract execution on dates mutually agreed to between you and IBM.

## **1.9 Charges**

The Professional Services will be conducted on a fixed fee ("Fee") basis with the prices defined in the Order Document, Section 2.3. All charges are exclusive of any applicable taxes.

Travel and living costs (including actual transportation and lodging, and per diem meal expense) are defined in the Order Document, Section 2.4.

IBM will invoice Client in accordance as defined in the Order Document, Section 3, Invoicing.

Any delay in performance of Client responsibilities may result in additional charges as determined in accordance with the Project Change Request process delineated in Appendix A-1 of this SOW.

Unless otherwise stated herein, charges are based upon a contiguous work schedule. Delays in the work schedule are subject to the Project Change Control Procedure set forth in Appendix A-1 and may result in an increase in charges.

## **1.10 Additional Terms and Conditions**

### **1.10.1 Protected Health Information and Confidential Information**

Notwithstanding anything to the contrary in the Agreement, the parties hereto agree that the IBM Agreement for the Exchange of Confidential Information ("AECI") shall govern the obligations and rights of the parties with respect to any Information (as defined in the AECI) exchanged between the parties during the term of this SOW. The AECI is incorporated into, and subject to, this SOW, and is located at <http://ibm.com/terms/us> or as otherwise identified in the signature block if an AECI is already in place between the parties.

### **1.10.2 Export Controlled Content**

Customer shall not provide Content that is export controlled or requires an export license by IBM or its Affiliates.

## **1.11 Termination**

Either party may terminate this SOW immediately for cause if the other is in material breach of its terms, provided the one who is not complying is given notice and reasonable time to comply. Upon termination, you will pay the following amounts to IBM: i) the charges for Services IBM provides through termination, and all materials IBM has prepared through termination, whether or not completed or delivered, and ii) if you terminate, all costs and expenses IBM incurs in terminating the Services.

## **Appendix A: Project Procedures**

### **A - 1: Project Change Control Procedure**

A Project Change Request ("PCR") is used to document a change and the effect the change will have on the Services. Both parties will review the PCR and agree to implement it, recommend it for further investigation, or reject it. IBM will specify any charges for such investigation.

IBM and you may determine that it is necessary to exceed the number of estimated hours for the Services as stated in the "Charges" section. In such event, you may authorize additional hours and funding by written request. The request must reference the SOW number. Through the end of the calendar year (i.e., December 31) during which this SOW is originally executed, additional hours, funding, and End Date extension may be requested in writing, at the originally contracted hourly rate, specified in the "Charges" section. If accepted or initiated by IBM, such letter or e-mail will act as a change authorization to this SOW. All other requested changes will require execution of a Project Change Request.

### **A - 2: Escalation Procedure**

Client and IBM will meet to resolve issues relating to the Services.

- a. If an issue is not resolved within three (3) business days, Client's executive sponsor will meet with IBM's Project Manager to resolve the issue.
- b. If the conflict is resolved, the resolution will be addressed through the Project Change Control Procedure.
- c. While a conflict is being resolved, IBM will provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict; Client agrees to pay invoices per this SOW.

## Appendix B: Items to be Delivered

Item to be delivered	Purpose and Content	Type	Delivery Method
Not Applicable	Not Applicable	Not Applicable	Not Applicable

### Appendix C: Sample Project Change Request

PROJECT CHANGE REQUEST (PCR)	
<b>PCR Date:</b>	<b>Requested by:</b>
<b>PCR Number:</b>	
<p>This PCR must be approved by both parties and signed below on or before the offer expiration date before the PCR can be implemented. This offer will expire on {insert mm/dd/yyyy}, unless extended by IBM in writing. All other terms in the referenced SOW not affected by this PCR remain in full force and effect.</p>	
<p>The parties agree that this PCR modifies the existing referenced SOW as follows:</p> <p><b><i>{insert language regarding the changes to the SOW here}</i></b></p>	
<p><b><i>{insert language regarding the impact of the changes here... sample text is below}</i></b></p> <p><b>If extending the date:</b> The new estimated End Date is {End Date}.</p> <p><b>If adding hours:</b> The additional estimated services hours for this PCR are {Number of hours}, at \${Hourly rate} per hour, for additional estimated professional services charges of \${Fee total}.</p> <p><b>If adding Fixed Fee Services:</b> The additional fixed fee for performing the Services defined in this PCR is \${Fee total}.</p> <p><b>If adding T&amp;L:</b> The additional estimated travel and living expenses (including actual transportation and lodging, and per diem meal expenses) for this PCR are \${Expenses}.</p>	
PCR Approval	
<p>In entering into this PCR, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or the SOW, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under the SOW. Each of us agrees that the complete agreement between us about these Services consists of 1) this Project Change Request, 2) the referenced SOW including any previous mutually-approved PCRs, and 3) the Agreement or any equivalent agreement in effect between us as identified in the SOW.</p>	
Agreed to:	Agreed to:
Customer Name: <b>Masarykův onkologický ústav</b>	<b>IBM Česká republika, spol. s r.o.</b>
By (Authorized Signature):	By (Authorized Signature):
Name (type or print):	Name (type or print):
Date:	Date:
PCR Estimated Start Date (remove if not applicable):	Statement of Work Name:
PCR Estimated End Date (remove if not applicable):	Statement of Work Number:

## Dodatek ke zpracování údajů

Tento Dodatek o zpracování údajů (DPA) a příslušné Přílohy k DPA se vztahují ke Zpracování osobních údajů společnosti IBM jménem Zákazníka (Osobních údajů Zákazníka) za účelem poskytování služeb Cloud Service a ostatních služeb dohodnutých ve Smlouvě (Služby). Přílohy k DPA pro jednotlivé Služby budou uvedeny v příslušném TD. Tento DPA podléhá podmínkám Smlouvy (pojmy s počátečními velkými písmeny, které zde nejsou definovány, mají význam uvedený v Obecném nařízení o ochraně osobních údajů 2016/679 (General Data Protection Regulation, GDPR)). V případě rozporu bude mít Příloha k DPA přednost před DPA, který má přednost před Smlouvou, s výjimkou situací výslovně stanovených ve Smlouvě a označujících relevantní Oddíl DPA, před nímž má přednost.

### 1. Zpracování

- 1.1 Zákazník (a) je výhradním Správcem Osobních údajů Zákazníka nebo (b) obdržel instrukce a oprávnění příslušných Správců, aby vyjádřil souhlas se Zpracováním osobních údajů Zákazníka společností IBM, jak je stanoveno v tomto DPA. Zákazník jmenuje společnost IBM Zpracovatelem, který bude Zpracovávat osobní údaje Zákazníka. Pokud existují další Správci, Zákazník je identifikuje a informuje společnost IBM o existenci těchto dalších Správců ještě před poskytnutím jejich Osobních údajů, jak je stanoveno v Příloze k DPA.
- 1.2 Seznam kategorií Subjektů údajů, typů Osobních údajů Zákazníků, Zvláštních kategorií osobních údajů a činností při zpracování je uveden v příslušné Příloze k DPA pro danou Službu. Doba trvání Zpracování odpovídá době trvání Služby, pokud není v příslušné Příloze k DPA uvedeno jinak. Povahou, účelem a předmětem Zpracování je poskytování Služby, jak je popsáno v příslušném TD.
- 1.3 Společnost IBM bude Zpracovávat Osobní údaje Zákazníka podle písemných pokynů Zákazníka. Rozsah pokynů Zákazníka týkajících se Zpracování Osobních údajů Zákazníka je vymezen Smlouvou, tímto DPA včetně příslušné Přílohy k DPA a používáním a konfigurací a případně funkcí Služby ze strany Zákazníka a jeho oprávněných uživatelů. Zákazník může poskytnout i další pokyny, pokud je k tomu ze zákona povinen (Další pokyny). Pokud je společnost IBM přesvědčena, že tyto Další pokyny porušují GDPR nebo jiná platná nařízení na ochranu osobních údajů, společnost IBM informuje o této skutečnosti bez zbytečného prodlení Zákazníka a může pozastavit poskytování služeb, dokud Zákazník nezmění nebo písemnou formou nepotvrdí zákonnost těchto Dalšíh pokynů. Pokud společnost IBM oznámí Zákazníkovi, že Další pokyny není možné uskutečnit, nebo pokud Zákazník informuje společnost IBM, že neakceptuje nabídku Dalšíh pokynů připravených v souladu s Oddílem 10.2, Zákazník může ukončit předmětnou Službu podáním písemné výpovědi společnosti IBM do jednoho měsíce po oznámení. Společnost IBM refunduje poměrnou část veškerých předplacených poplatků za období po tomto datu ukončení.
- 1.4 Zákazník slouží jako jediné kontaktní místo pro IBM. Protože ostatní Správci mohou mít ve vztahu ke společnosti IBM určitá přímá práva, Zákazník se zavazuje uplatňovat všechna tato práva jejich jménem a získat veškerá potřebná oprávnění od ostatních Správců. Společnost IBM bude zproštěna své povinnosti informovat nebo uvědomit jiného Správce, pokud takové informace nebo oznámení poskytne Zákazníkovi. Podobně bude i společnost IBM sloužit jako jediné kontaktní místo pro Zákazníka ve vztahu k jeho povinnostem Zpracovatele podle tohoto DPA.
- 1.5 Společnost IBM bude ve vztahu ke Službám dodržovat veškeré právní předpisy a nařízení v EHP (Právní předpisy na ochranu osobních údajů) platné pro Zpracovatele. Společnost IBM neodpovídá za zjištění zákonných požadavků, které jsou platné pro podnikání Zákazníka, ani za zjištění, zda poskytování Služeb ze strany společnosti IBM splňuje požadavky těchto právních předpisů. Ve vztahu mezi stranami je za soulad Zpracování Osobních údajů Zákazníka se zákonem odpovědný Zákazník. Zákazník nebude využívat Služby ve spojení s Osobními údaji, pokud by tak došlo k porušení příslušných Právních předpisů na ochranu osobních údajů.

### 2. Technická a organizační opatření

- 2.1 Společnost IBM implementuje a bude udržovat technická a organizační opatření stanovená v příslušné Příloze k DPA (TOM), aby byla zajištěna odpovídající úroveň zabezpečení vzhledem k rizikům a rozsahu odpovědnosti společnosti IBM. Technická a organizační opatření (TOM) podléhají technickému a jinému vývoji. Proto si společnost IBM vyhrazuje právo upravit tato Technická a organizační opatření, za předpokladu, že tato úprava nijak nenaruší funkčnost a zabezpečení Služeb.
- 2.2 Zákazník potvrzuje, že Technická a organizační opatření představují odpovídající úroveň ochrany Osobních údajů Zákazníka s ohledem na rizika spojená se Zpracováním osobních údajů Zákazníka.

### 3. Práva a požadavky Subjektů údajů

- 3.1 V rozsahu povoleném ze zákona bude společnost IBM informovat Zákazníka o požadavcích Subjektů údajů vyplývajících z výkonu jejich práv Subjektů údajů (např. na opravu, výmaz a blokování údajů), adresovaných přímo společnosti IBM ve vztahu k Osobním údajům Zákazníka. Zákazník odpovídá za reakce na tyto požadavky Subjektů údajů. Společnost IBM poskytne Zákazníkovi přiměřenou součinnost při reakcích na tyto požadavky Subjektů údajů v souladu s Oddílem 10.2.

- 3.2 Pokud Subjekt údajů vznesse nárok přímo vůči společnosti IBM kvůli porušení svých práv, Zákazník odškodní společnost IBM za veškeré náklady, poplatky, náhrady škody, výdaje nebo ztráty vyplývající z tohoto nároku, za předpokladu, že společnost IBM informovala Zákazníka o tomto nároku a dala Zákazníkovi příležitost spolupracovat se společností IBM při obraně před tímto nárokem a na jeho narovnání. V souladu s podmínkami této Smlouvy může Zákazník vznést nárok na částky zaplacené společností IBM Subjektu údajů za porušení jeho práv Subjektu údajů způsobené porušením povinností společnosti IBM dle GDPR.

## **4. Požadavky třetích osob a důvěrnost**

- 4.1 Společnost IBM neposkytne Osobní údaje Zákazníka žádné třetí osobě, pokud ji k tomu Zákazník nezmocní nebo to nebude vyžadovat zákon. Pokud si vláda nebo Dozorový orgán vyžádají přístup k Osobním údajům Zákazníka, společnost IBM informuje Zákazníka o této skutečnosti ještě před poskytnutím těchto údajů, pokud to není zákonem zakázáno.
- 4.2 Společnost IBM vyžaduje, aby se všichni její pracovníci, kteří jsou oprávněni Zpracovávat Osobní údaje Zákazníků, zavázali k zachování důvěrnosti a aby nezpracovávali tyto Osobní údaje Zákazníků k žádným jiným účelům, s výjimkou situace, kdy si to vyžádá Zákazník nebo to bude požadováno platným zákonem.

## **5. Audit**

- 5.1 Společnost IBM umožní a usnadní audity, včetně kontrol, prováděné Zákazníkem nebo jiným auditorem, kterého Zákazník pověří, u Společnosti IBM, které zpracovávají Osobní údaje Zákazníků, v souladu s následujícími postupy:
- Na základě písemné žádosti Zákazníka společnost IBM poskytne Zákazníkovi nebo jím pověřenému auditorovi aktuální certifikace anebo souhrnné sestavy auditů, které nechala společnost IBM provést za účelem pravidelného testování, posuzování a vyhodnocování efektivitu Technických a organizačních opatření (TOM).
  - Společnost IBM poskytne Zákazníkovi přiměřenou součinnost v podobě poskytnutí dostupných dalších informací týkajících se Technických a organizačních opatření, aby Zákazník těmito opatřeními lépe porozuměl.
  - Pokud Zákazník bude potřebovat další informace, aby mohl splnit vlastní povinnosti (nebo povinnosti ostatních Správců) ve vztahu k auditu nebo požadavek kompetentního Dozorového orgánu, Zákazník bude písemně informovat společnost IBM, aby mu mohla společnost IBM tyto informace poskytnout nebo mu k nim umožnit přístup.
  - Pokud nebude možné splnit povinnost auditu nařízenou platnými právními předpisy jiným způsobem, mohou subjekty, jimž to nařizuje zákon (např. vládní regulační agentura vykonávající dohled nad provozem Zákazníka), Zákazník nebo jím pověřený auditor provést fyzickou návštěvu v prostorách, kde je poskytována Služba, a sice během běžné pracovní doby a pouze takovým způsobem, který bude co nejméně narušovat provoz IBM, s tím, že načasování této návštěvy bude koordinováno a bude v souladu veškerými postupy auditu popsanými v Příloze k DPA, aby se snížilo riziko pro ostatní Zákazníky IBM.
- 5.2 Každá ze stran ponese své vlastní náklady ve vztahu k odstavcům a. a b. Oddílu 5.1. Jakákoli další podpora bude poskytnuta v souladu s ustanoveními Oddílu 10.2.

## **6. Vrácení nebo odstranění Osobních údajů Zákazníka**

- 6.1 Po ukončení Smlouvy nebo po uplynutí její platnosti společnost IBM buď odstraní, nebo vrátí Osobní údaje Zákazníka do jeho vlastnictví, jak je uvedeno v příslušné Příloze k DPA, pokud není platnými právními předpisy upraveno jinak.

## **7. Dílčí zpracovatelé**

- 7.1 Zákazník zmocní společnost IBM k tomu, aby zapojila smluvní partnery do Zpracování osobních údajů Zákazníka (Dílčí zpracovatelé). Seznam aktuálních Dílčích zpracovatelů je uveden v příslušné Příloze k DPA. Společnost IBM předem informuje Zákazníka o veškerých změnách Dílčích zpracovatelů, jak je uvedeno v příslušné Příloze k DPA. Do 30 dnů od oznámení společnosti IBM o zamýšlené změně může Zákazník vznést námitku proti přidání Dílčího zpracovatele z důvodu, že by toto přidání mělo za následek porušení platných právních požadavků Zákazníkem. Námitka Zákazníka bude vznesena písemně a bude zahrnovat specifické důvody Zákazníka pro danou námitku a možnosti, jak případně danou situaci řešit. Pokud Zákazník v daném období nevznesne žádnou námitku, může být příslušný Dílčí zpracovatel pověřen Zpracováním osobních údajů Zákazníka. Společnost IBM bude od všech schválených Dílčích zpracovatelů před vlastním Zpracováním jakýchkoli Osobních údajů Zákazníků těmito Dílčími zpracovateli vyžadovat v zásadě podobné povinnosti týkající se ochrany osobních údajů, jako jsou stanoveny v DPA.
- 7.2 Pokud Zákazník vznesne oprávněnou námitku vůči přidání Dílčího zpracovatele a společnost IBM nebude schopna přiměřeným způsobem této námitce Zákazníka vyhovět, informuje o této skutečnosti Zákazníka. Zákazník může ukončit předmětné Služby podáním písemné výpovědi společnosti IBM do jednoho měsíce od oznámení společnosti IBM. Společnost IBM refunduje poměrnou část veškerých předplacených poplatků za období po tomto datu ukončení.

## **8. Přeshraniční zpracování údajů**

- 8.1 Vyjádřením souhlasu s tímto DPA Zákazník uzavírá Standardní smluvní doložky EU, jak je uvedeno v příslušné Příloze k DPA, s Dílčími zpracovateli usazenými buď mimo Evropský hospodářský prostor, nebo v zemích, jejichž úroveň ochrany osobních údajů považuje Evropská komise za dostatečnou (Dovozci údajů). Dovozci údajů, kteří jsou Společnostmi IBM, jsou tzv. "Dovozci údajů IBM".
- 8.2 Pokud Zákazník informuje společnost IBM o jiném Správci a společnost IBM proti tomu do 30 dnů po tomto oznámení Zákazníka nevznese námitku, Zákazník vyjádří jménem těchto ostatních Správců souhlas, nebo pokud nemůže vyjádřit souhlas, obstará si jej od těchto ostatních Správců, a ti se stanou dalšími vývozci údajů ve smyslu Standardních smluvních doložek EU uzavřených mezi Dovozci údajů IBM a Zákazníkem. Společnost IBM zajistila přijetí souhlasu těchto ostatních Správců ze strany Dovozců údajů IBM. Zákazník poskytne souhlas a v relevantních případech zajistí souhlas ostatních Správců s tím, že Standardní smluvní doložky EU, včetně veškerých nároků, které z nich vyplývají, podléhají podmínkám stanoveným v této Smlouvě, včetně vyloučení a omezení odpovědnosti. V případě rozporu mají přednost Standardní smluvní doložky EU.
- 8.3 Pokud společnost IBM zapojí v souladu s Oddílem 7 nového Dílčího zpracovatele, který je Dovozcem údajů IBM, společnost IBM si obstará souhlas tohoto nového Dovozce údajů IBM se Standardními smluvními doložkami EU a Zákazník svým jménem anebo jménem ostatních Správců, pokud to lze uplatnit, předem odsouhlasí, že tento Dovozce údajů IBM může být dalším dovozcem údajů v souladu se Standardními smluvními doložkami EU. Pokud Zákazník nemůže vyjádřit souhlas za Správce, zajistí Zákazník souhlas daného Správce. Pokud nový Dovozce údajů není Společností IBM (Dovozce údajů, který je třetí osobou), dle uvážení společnosti IBM (i) Zákazník uzavře samostatné Standardní smluvní doložky EU, jak je poskytne společnost IBM, nebo (ii) Dovozce údajů IBM uzavře s tímto Dovozcem údajů, který je třetí osobou, písemnou smlouvu, která bude zavazovat Dovozce údajů, který je třetí osobou, stejnými povinnostmi, jaké jsou kladeny na Dovozce údajů IBM podle Standardních smluvních doložek EU.

## **9. Porušení ochrany osobních údajů**

- 9.1 Pokud společnost IBM zjistí, že došlo k Porušení ochrany osobních údajů v souvislosti s poskytováním Služeb, informuje o tom Zákazníka bez zbytečného odkladu. Společnost IBM co nejdříve vyšetří případ Porušení ochrany osobních údajů, pokud k němu došlo v infrastruktuře IBM nebo v jiné oblasti, za kterou odpovídá IBM, a poskytne Zákazníkovi podporu, jak je stanoveno v Oddílu 10.

## **10. Podpora**

- 10.1 Společnost IBM bude v maximálním možném rozsahu pomáhat Zákazníkovi technickými a organizačními opatřeními za účelem splnění závazků Zákazníka ve věci práv Subjektů údajů a při zajišťování souladu se závazky Zákazníka vztahujícími se k zabezpečení Zpracování, oznámení o Porušení ochrany osobních údajů a k Hodnocení dopadu na ochranu osobních údajů, přičemž společnost IBM bude brát v úvahu všechny informace, které má k dispozici.
- 10.2 Zákazník požádá o jakoukoli podporu uvedenou v tomto DPA písemnou formou. Společnost IBM bude Zákazníkovi za poskytování této podpory nebo Dalšíh pokynů účtovat poplatek, který není vyšší než přiměřená částka, přičemž tyto poplatky musí být stanoveny v nabídce a odsouhlaseny oběma stranami písemně, nebo jak je stanoveno v příslušném ustanovení o řízení změn v této Smlouvě.



## APPENDIX E

### DPA Exhibit for Reading of Client Personal Data in delivering Services for CTM and WFO

This Data Processing Addendum Exhibit (DPA Exhibit) specifies the DPA for Services delivered under this SOW.

#### 1. Processing

IBM will process Client Personal Data for the Service, as described in the SOW and as supplemented and specified by this DPA Exhibit. These processes are in addition to those as specified in the DPA Exhibits for the Cloud Service.

##### 1.1 Processing Activities

The processing activities with regard to Client Personal Data are:

- Reading

IBM will access Client Personal Data only through the applicable Cloud Service as a "User" in a read-only mode.

#### 2. Client Personal Data

##### 2.1 Categories of Data Subjects, Types of Client Personal Data and Special Categories of Client Personal Data

The Categories of Data Subjects, Types of Client Personal Data and Special Categories of Client Personal Data are defined in the DPA Exhibit (Data Sheet) applicable for the respective Cloud Service for which IBM is providing the Services, as specified in the SOW. Therefore the information set out in the DPA Exhibit regarding Categories of Data Subjects, Types of Client Personal Data and Special Categories of Client Personal Data for the respective Cloud Service also apply to the Service.

#### 3. Technical and Organizational Measures

The technical and organizational measures in respect of the relevant Cloud Service are set out separately in the DPA Exhibit for that Cloud Service. The technical and organizational measures (TOMs) applicable to the Service are described below. Client confirms its obligation to implement appropriate TOMs within its own area of responsibility as required by applicable Data Protection Laws.

##### 3.1 Data Protection

- a. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and sub-processors, and only to the extent necessary to deliver the Service, unless otherwise specified in the SOW.

##### 3.2 Access Control

IBM workstations used to access Client Personal data are secured under standard IBM IT security policies and rules that cover password control, anti-virus protection, firewall protection, hard drive password or disk encryption, automatic security patch installation, VPN to access the IBM network, control of IBM required software on the workstation, approval requirements for open source software and monitoring software to ensure security policy compliance.

IBM may require access to Client Personal Data through the Cloud Service as a user to deliver the Service. Such user access is controlled by the Client. Client will restrict and limit such access to the least level required to provide and support the Service. Such access, including administrative access (privileged access), will be individual, role-based, and subject to Client processes and policies. Client will terminate such access provided to IBM personnel at the end of the Service.

##### 3.3 Security Policies

IBM will maintain and follow its standard mandatory employment verification requirements for all new hires, including supplemental employees, and extend such requirements to wholly owned IBM subsidiaries. In accordance with IBM internal process and procedures, these requirements will be periodically reviewed and include, but may not be limited to, criminal background checks, as legally

permitted, proof of identity validation, and additional checks as deemed necessary by IBM. Each IBM company is responsible for implementing these requirements in its hiring process as applicable and permitted under local law.

IBM employees will complete security and privacy education annually and certify each year that they will comply with IBM's ethical business conduct, confidentiality, and security policies, as set out in IBM's Business Conduct Guidelines. Additional policy and process training will be provided to persons granted administrative access to the Service components that is specific to their role within IBM's operation and support of the Service.

#### 4. Deletion and Return of Client Personal Data

IBM will neither return nor delete the Client Personal Data as the Service is being provided directly within the Cloud Services and therefore the regulation about deletion and return set out in the DPA Exhibit for the respective Cloud Services applies.

#### 5. Sub-processors

IBM may use Sub-processors during the delivery of the Service, as listed below.

- a. IBM companies located in the European Economic Area or countries considered by the European Commission to have adequate protection:

Name of Subprocessor	Address of Subprocessor
IBM Deutschland GmbH	IBM Deutschland GmbH IBM-Allee 1 Ehningen 71139 Germany

- b. IBM Data Importers (IBM companies established outside either the European Economic Area or countries considered by the European Commission to have adequate protection):

Name of Subprocessor	Address of Subprocessor
International Business Machines Corporation	1 New Orchard Road Armonk, New York 10504-1722, United States

#### 6. International Data Transfer

##### 6.1 EU Standard Contractual Clauses

EU Standard Contractual Clauses signed by all IBM Data Importers is available at: <http://ibm.biz/EUMCDoc>.

#### 7. Data Privacy Officer and Other Controllers

Client is responsible for providing complete, accurate and up-to-date information about its data privacy officer and each of their other Controllers (including their data privacy officer). Any updates to the information should be provided to IBM by contacting [DPA.Help.project@uk.ibm.com](mailto:DPA.Help.project@uk.ibm.com) along with the contract # and client name.

#### 8. IBM Privacy Contact

The IBM privacy contact can be contacted at [DPA.Help.project@uk.ibm.com](mailto:DPA.Help.project@uk.ibm.com).

## APPENDIX F

### IBM Client Relationship Agreement, version 03/2018

This Agreement on General Commercial Terms (Client Relationship Agreement/CRA) and applicable Attachments and Transaction Documents (TDs) are the complete agreement regarding transactions under this CRA (together, the "Agreement") under which Client may order Programs, Cloud and other Services, Machines and Appliances (collectively IBM Products) and third-party products and services (Non-IBM Products). Attachments typically contain additional terms that apply to similar types of offerings. TDs, such as service descriptions, order documents, statements of work or supplements, contain specific details related to an order for a Product and there may be more than one TD providing the details of an order. In the event of conflict, an Attachment prevails over this CRA and a TD prevails over both the CRA and any Attachment.

#### 1. Programs

- a. A Program is an IBM-branded computer program and related material available for license subject to the payment of charges. Program details are described in an Attachment called License Information (LI). Programs do not include Machine Code or Project Materials. Programs are copyrighted and licensed (not sold). When IBM accepts an order for a Program, Client is granted a nonexclusive license to: a) use the Program only up to its authorizations and subject to its LI; b) make and install copies to support such authorized use; and c) make a backup copy. Programs may be used by Client, its authorized employees and contractors only within Client's Enterprise, and not to provide hosting or timesharing services to any third party. Client may not sublicense, assign, or transfer the license for any Program. Additional rights may be available for additional fees or under different terms. Client is not granted unrestricted rights to use the Program nor has Client paid for all of the economic value of the Program. Certain Programs may contain third party code licensed under separate agreements identified in the LI.
- b. The license granted for a Program is subject to Client:
  - 1) reproducing copyright notices and other markings;
  - 2) ensuring anyone who uses the Program does so only for Client's authorized use and complies with the license;
  - 3) not reverse assembling, reverse compiling, translating, or reverse engineering the Program; and
  - 4) not using any of the elements of the Program or related licensed material separately from the Program.
- c. The metric applicable to a Program license is specified in an Attachment or TD. All licenses on a server or capacity-based metric must be licensed to the full capacity of the server on which the Program is installed, unless sub-capacity usage is available from IBM and Client complies with the applicable sub-capacity requirements and terms as set forth in Attachments and TDs.

#### 2. Services – Cloud Services

- a. A Cloud Service is an IBM branded offering provided by IBM and made available via a network. Each Cloud Service is described in an Attachment or TD. Cloud Services are designed to be available 24/7, subject to maintenance. Client will be notified of scheduled maintenance. Technical support and service level commitments, if applicable, are specified in an Attachment or TD.
- b. When IBM accepts Client's order, IBM provides Client the authorizations specified in the TD. The term, including any renewal term, for a Cloud Service is described in an Attachment or TD.
- c. IBM will provide the facilities, personnel, equipment, software, and other resources necessary to provide the Cloud Services and generally available user guides and documentation to support Client's use of the Cloud Service. Client will provide hardware, software and connectivity to access and use the Cloud Service, including any required Client-specific URL addresses and associated certificates. An Attachment or TD may have additional Client responsibilities.
- d. Client may access a Cloud Service only to the extent of authorizations acquired by Client. Client is responsible for use of Cloud Services by any user who accesses the Cloud Service with Client's account credentials. A Cloud Service may not be used in any jurisdiction for unlawful, obscene, offensive or fraudulent Content or activity, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. If there is a complaint or notice of violation, use may be suspended until resolved, and terminated if not resolved promptly. Client may not
  - i) resell direct access to a Cloud Service to a third party outside Client's Enterprise; or
  - ii) combine Cloud

Services with Client's value add to create a commercially available Client branded solution for which Client charges a fee.

## **2.1. Content and Data Protection for Cloud Services**

- a. Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to the Cloud Service. Use of the Cloud Service will not affect Client's existing ownership or license rights in such Content. IBM and its contractors, and subprocessors may access and use the Content solely for the purpose of providing and managing the Cloud Service, unless otherwise described in a TD.
- b. Upon request by either party, IBM, Client or their affiliates will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.
- c. IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the Cloud Service, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content, however some Content may remain in Cloud Service backup files until expiration of such files as governed by IBM's backup retention practices.
- d. Each Cloud Service is designed to protect Content as described in the Agreement. IBM's Data Security and Privacy Principles for IBM Cloud Services (DSP), at <http://www.ibm.com/cloud/data-security>, apply for generally available Cloud Service offerings or as described in the applicable TD. IBM will treat all Content as confidential by not disclosing Content except to IBM employees, contractors, and subprocessors, and only to the extent necessary to deliver the Cloud Service, unless otherwise specified in a TD. Specific security features and functions of a Cloud Service may be provided in an Attachment and TDs. Client is responsible to assess the suitability of each Cloud Service for Client's intended use and Content. By using the Cloud Service, Client acknowledges that it meets Client's requirements and processing instructions.
- e. Client acknowledges that i) IBM may modify the DSP from time to time at IBM's sole discretion and ii) such modifications will supersede prior versions. The intent of any modification to the DSP will be to i) improve or clarify existing commitments, ii) maintain alignment to current adopted standards and applicable laws, or iii) provide additional commitments. No modification to the DSP will materially degrade the security of a Cloud Service.

## **2.2. Changes to Cloud Services**

- a. IBM may modify a Cloud Service, without degrading its functionality or security features.
- b. IBM may withdraw a Cloud Service on 12 months' notice, unless otherwise stated in a TD. IBM will continue to provide the Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another IBM offering.

## **2.3 Suspension and Termination of Cloud Services**

- a. IBM may suspend, revoke or limit Client's use of a Cloud Service if IBM determines there is a material breach of Client's obligations, a security breach, or violation of law. If the cause of the suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the Cloud Service. If Client fails to take such actions within a reasonable time, IBM may terminate the Cloud Service.
- b. Client may terminate a Cloud Service on one month's notice: (i) at the written recommendation of a government or regulatory agency following a change in either applicable law or the Cloud Services; (ii) if IBM's modification to the computing environment used to provide the Cloud Service causes Client to be noncompliant with applicable laws; or (iii) if IBM notifies Client of a modification that has a material adverse effect on Client's use of the Cloud Service, provided that IBM will have 90 days to work with Client to minimize such effect. In the event of such termination, IBM shall refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. If the Agreement is terminated for any other reason, Client shall pay to IBM, on the date of termination, the total amounts due per the Agreement. Upon termination, IBM may assist Client in transitioning Client's Content to an alternative technology for an additional charge and under separately agreed terms.

### 3. Services – Other Services

- a. IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or TD. Client will own the copyright in works of authorship that IBM develops for Client under a Statement of Work (SOW) (Project Materials). Project Materials exclude works of authorship delivered to Client, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW (Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants Client an irrevocable (subject to Client's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.
- b. Either party may terminate a Service if a material breach concerning the Service is not remedied within a reasonable time. IBM will provide at least 90 days' notice prior to withdrawal of Service. Client will pay charges for Services provided through the effective date of termination. If Client terminates without cause or IBM terminates for breach, Client will meet all minimum commitments and pay termination or adjustment charges specified in the SOW or TD and any additional costs IBM reasonably incurs because of early termination, such as costs relating to subcontracts or relocation. IBM will take reasonable steps to mitigate any such additional costs.

### 4. Machines and Appliances

- a. A Machine is an IBM-branded device including its features, upgrades, and accessories. An Appliance is a Program and Machine combination designed for a particular function. Unless otherwise provided, terms that apply to a Program apply to the Program component of an Appliance and terms that apply to a Machine apply to the Machine component of an Appliance. Client may not use or transfer an Appliance's Program component independently of the Appliance.
- b. When IBM accepts Client's order, IBM transfers title to Machines and non-IBM machines to Client or Client's lessor upon payment of all amounts due, except in the United States where title transfers upon shipment. IBM bears risk of loss until delivery to the carrier for shipment. IBM pays for insurance on Client's behalf until delivery to Client's location. Client must report any loss in writing to IBM within 10 business days of delivery and follow the claim procedure. Additional charges may apply for IBM installation more than six months after shipment. Client must follow instructions provided to install Client set up Machines.
- c. Machines and parts removed or exchanged for upgrade, warranty service, or maintenance are IBM property and must be returned to IBM promptly. A replacement assumes the warranty or maintenance status of the replaced part. A Machine may include parts that are not new and in some instances Machines may have been previously installed. Regardless, IBM's warranty terms apply. Client will promptly install or allow IBM to install mandatory engineering changes. Client may only acquire Machines for use within Client's Enterprise in Western Europe, and not for resale, lease, or transfer outside of Western Europe. For purposes of this paragraph, **Western Europe** means European Union member countries and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican State. Lease-back financing is permitted.

#### 4.1. Machine Code and Built in Capacity

- a. Machines may include Machine Code (MC) and Built in Capacity (BIC). MC is computer instructions, fixes, replacements and related materials, such as data and passwords relied on, provided, used with or generated by MC, that permit the operation of the machine's processors, storage or other functionality. MC is copyrighted and licensed (not sold). IBM only provides copies, fixes or replacements for MC for Machines under warranty or IBM maintenance, or under a separate written agreement which may be subject to additional charges. Client agrees that all copies, fixes or replacements for MC will be obtained solely as authorized by IBM. Client is granted a nonexclusive license to use MC only (i) on the Machine for which IBM provided it, and (ii) to access and use BIC only to the extent paid for by Client, activated by IBM and subject to the Attachment called IBM Authorized Use Table for Machines (AUT) available from IBM and at [http://www.ibm.com/systems/support/machine\\_warranties/machine\\_code/aut.html](http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html). BIC is computing resource (e.g., processors, storage and other functionality) that IBM provides for a Machine. Use of BIC may be restricted by contract, technological or other measures. Client agrees to IBM's implementation of technological and other measures that restrict, monitor and report on use of BIC or MC, and to install any changes IBM provides. Client may not alter, reverse assemble, reverse compile,

translate or reverse engineer the MC, or circumvent or interfere, by any means, with IBM's contractual, technological or other measures that restrict, monitor or report on use of BIC or MC. While Client's license to MC is in effect, Client may transfer possession of the entire MC along with all of Client's rights and obligations only with corresponding transfer of the Machine and a hardcopy of this MC license, and only if the transferee agrees to the terms of this MC license. Client's MC license terminates immediately upon transfer. This Agreement governs MC and BIC on Machines acquired from another party. Use of BIC in excess of authorizations from IBM is subject to additional charges.

## 5. Warranties and Post Warranty Support

- a. IBM warrants that Programs used in their specified operating environment conform to their official published specifications. The warranty period for a Program (not the Program component of an Appliance) is one year, or the initial license term if less than one year, unless another warranty period is specified in an Attachment or TD. During the Program warranty period, IBM provides Software Subscription and Support (S&S), entitling Client to defect correction information, restrictions, bypasses, and new releases and versions IBM makes generally available. Unless Client elects to discontinue S&S, annual S&S automatically renews at then-current charges until S&S for a version or release is withdrawn. If Client elects to continue S&S for a Program at a designated Client site, Client must maintain S&S for all uses and installations of the Program at that site.
- b. IBM warrants that it provides Cloud and other Services using commercially reasonable care and skill in accordance with the applicable Attachment or TD, including any completion criteria, and that Project Materials will comply with the Attachment or TD at the time of delivery. The warranty for a Service ends when the Service ends.
- c. IBM warrants that Machines used in their specified operating environment conform to their official published specifications. For a Machine or Appliance, the warranty period is specified in the Attachment or TD. During its warranty period, IBM will repair or exchange the Machine without charge, as specified in the Attachment. Warranty does not apply to Machines that Client did not allow IBM to install as required by the TD. Client may purchase warranty service upgrades and post warranty support where available. For Appliances, post warranty support includes maintenance and S&S. The warranty for Machines acquired in Western Europe applies in all Western Europe countries, provided the Machines have been announced and made available in such countries. For purposes of this paragraph, **Western Europe** means European Union member countries and Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican State.
- d. If a Machine or Program does not function as warranted during its warranty period and IBM is unable to repair or replace it with a functional equivalent, Client may return it to IBM for a refund of the amount Client paid (for recurring charges, up to twelve months' charges) and Client's license or right to use it terminates.
- e. **IBM does not warrant uninterrupted or error-free operation of an IBM Product or that IBM will correct all defects or prevent third party disruptions or unauthorized third party access to an IBM Product. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose. IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, failure to comply with instructions provided by IBM, or if otherwise stated in an Attachment or TD. Non-IBM Products are sold under the Agreement as-is, without warranties of any kind, or liabilities for defects. The parties hereby exclude any liability of IBM for defects beyond the agreed warranties.**

Third parties may provide their own warranties to Client.

## 6. Charges, Taxes, Payment and Verification

- a. Client agrees to pay all applicable charges specified for an IBM Product or non-IBM Product, charges for use in excess of authorizations, and any late payment fees. Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges. Amounts are due upon receipt of the invoice and payable within 30 days of the invoice date to an account specified by IBM. Prepaid Services must be used within the applicable period. IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.
- b. Client agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to IBM; iii) pay IBM only the net proceeds after tax; and iv) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.



- c. IBM may change recurring charges, labor rates and minimum commitments on three months' notice, except for charges for Cloud Services which IBM may change charges on thirty days' notice or as specified in a TD. A change applies on the invoice date or the first day of the charging period on or after the effective date IBM specifies in the notice. IBM may change one-time charges without notice, though Client may terminate the Agreement if Client disagrees with the change. However, a change to a one-time charge does not apply to an order if i) IBM receives the order before the announcement date of the increase and ii) within three months after IBM's receipt of the order, the product is shipped or made available to Client.
- d. Client will i) maintain, and provide upon request, records, system tools output, and access to Client's premises, as reasonably necessary for IBM and its independent auditor to verify Client's compliance with the Agreement, including MC and Program licenses and metrics, such as sub-capacity usage, and ii) promptly order and pay for required entitlements (including associated S&S or maintenance) at IBM's then current rates and for other charges and liabilities determined as a result of such verification, as IBM specifies in an invoice. These compliance verification obligations remain in effect during the term of any TD and for two years thereafter.

## **7. Liability and Indemnity**

- a. IBM's entire liability for all claims related to the 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. IBM 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 IBM, its affiliates, contractors, subprocessors, and suppliers.
- b. 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.
- c. If a third party asserts a claim against Client that an IBM Product acquired under the Agreement infringes a patent or copyright, IBM will defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM, provided that Client promptly (i) notifies IBM in writing of the claim, (ii) supplies information requested by IBM, and (iii) allows IBM to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts.
- d. IBM has no responsibility for claims based on Non-IBM Products, items not provided by IBM, 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 IBM Product when an infringement claim could have been avoided by using a current version or release.

## **8. Termination**

- a. Either party may terminate this CRA: i) without cause on at least one month's notice to the other after expiration or termination of its obligations under the Agreement; or ii) immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given notice and reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to successors and assignees. Termination of this CRA does not terminate TDs, and provisions of this CRA and Attachments as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. IBM may terminate Client's license to use a Program or MC if Client fails to comply with the Agreement. Client will promptly destroy all copies of the Program or MC after either party has terminated the license. Failure to pay is a material breach.

## **9. Governing Laws and Geographic Scope**

- a. Each party is responsible for complying with: i) laws and regulations applicable to its business and Content; and ii) import, export and economic sanction laws and regulations, including defense trade control regime of any jurisdiction, including the International Traffic in Arms Regulations and those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Client is responsible for its use of IBM and Non-IBM Products.
- b. Both parties agree to the application of the laws of the country where the transaction is performed (or for Cloud Services, the laws of the country of Client's business address) to the Agreement, without regard to conflict of law principles. The rights and obligations of each party are valid only in the country where the transaction is performed or, if IBM agrees, the country where the product is placed in productive use, except all licenses are valid as specifically granted. IBM will not serve as Client's exporter or importer for: i) any Content; or ii) use of any portion of the Cloud Service from a country outside Client's business address. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain

in full force and effect. Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

## 10. General

- a. Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with the Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this CRA. This paragraph does not apply to Content provided in the use of a Cloud Service.
- b. Client accepts an Attachment or TD by ordering, enrolling, using, or making a payment for, the product, offering or service. Since this CRA may apply to many future orders, IBM may modify this CRA by providing Client at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing services that do not expire, and renewals. For transactions with a defined renewable contract period, Client may request that IBM defer the change effective date until the end of the current contract period. Client accepts changes by placing new orders or continuing use after the change effective date or allowing transactions to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties.
- c. IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary, and does not undertake to perform any of Client's regulatory obligations, or assume any responsibility for Client's business or operations. Each party is responsible for determining the assignment of its personnel and all contractors and subprocessors, and for their direction, control, and compensation.
- d. IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery & corruption, and fraud. IBM and its personnel comply with such policies and require contractors and subprocessors to have similar policies.
- e. IBM Business Partners who use or make available Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings.
- f. As used in this paragraph, "Content" also includes any information or data Client may provide, make available or grant access to in connection with IBM providing other Services, maintenance, or Program support. Client is responsible for obtaining all necessary rights and permissions to enable, and grants such rights and permissions to, IBM, and its contractors and subprocessors to use, provide, store and process Content in the Cloud Services, other Services, maintenance, or Program support. This includes Client providing required information, making necessary disclosures and obtaining consent, if required, before providing individuals' information, including personal or other regulated information in such Content. Client is responsible for adequate back-up of Content. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for an offering, Client will not input, provide, or allow access to such Content unless specifically permitted in the terms of the relevant TD or unless IBM has otherwise first agreed in writing to implement additional security and other measures. IBM's Data Processing Addendum at <http://ibm.com/dpa> (DPA) and applicable DPA Exhibit(s) apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) applies to personal data contained in Content.
- g. IBM and its affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Client, its personnel and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Client will notify and obtain such consent. IBM may use personnel and resources in locations worldwide and third party suppliers to support the delivery of products and services.
- h. Account Data is information, other than Content and BCI, that Client provides to IBM to enable Client's acquisition or use of IBM Products or non-IBM Products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Client's acquisition or use of IBM Products or non-IBM Products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM Products and non-IBM Products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> provides additional details.
- i. License grants to Programs and MC hereunder are provided by International Business Machines Corporation, a New York corporation ("IBM Corporation"). IBM is acting as a distributor and delivering Programs and MC pursuant to this Agreement, and is responsible for enforcing the license terms and



fulfilling all obligations concerning such Programs and MC and no right or cause of action hereunder is created in favor of Client against IBM Corporation. Client waives all claims and causes of action against IBM Corporation and agrees to look solely to IBM for any rights and remedies in connection with Programs and MC.

- j. Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. Assignment of IBM rights to receive payments or assignment by IBM in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted.
- k. This CRA applies to IBM and Client (the signatories below) and their respective Enterprise companies who avail themselves of this CRA. The signatories shall coordinate the activities of Enterprise companies under this CRA. Enterprise companies include: (i) companies within the same country that Client or IBM control (by owning greater than 50% of the voting shares); and (ii) any other entity that controls, is controlled by or is under common control as Client or IBM and has signed a participation agreement.
- l. All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any course of dealing, discussions or representations between the parties.
- m. No right or cause of action for any third party is created by the Agreement or any transaction under it. Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control. Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action will not be unreasonably delayed or withheld. Pursuant to Section 1801 of Act No. 89/2012 Coll. (the "Civil Code"), Section 1799 and Section 1800 of the Civil Code as amended, do not apply to transactions under this Agreement. Client accepts the risk of a change of circumstances under Section 1765 of the Civil Code.
- n. IBM may use personnel and resources in locations worldwide, including third party contractors and subprocessors to support the delivery of the Cloud Services. IBM may transfer Content, including personally identifiable information, across country borders. A list of countries where Content may be processed for a Cloud Service is available at <http://www.ibm.com/cloud/datacenters> or as described in the Attachment or TD. IBM is responsible for the obligations under the Agreement even if IBM uses a third party contractor or subprocessors unless otherwise set forth in a TD. IBM will require subprocessors with access to Content to maintain technical and organizational security measures that will enable IBM to meet its obligations for a Cloud Service. A current list of subprocessors and their roles will be provided upon request.
- o. If Client includes, or authorizes others to include, personal data in the Content, Client represents that it is either the data controller or that it has, prior to agreeing to this Agreement or extending the benefit of the Cloud Services to any other data controller, been instructed by or obtained the consent of the relevant data controllers to enter into this Agreement. Client appoints IBM as a data processor to process such personal data. Client will not use the IBM Product in conjunction with personal data to the extent that doing so would violate applicable data protection laws.
- p. IBM shall reasonably cooperate with Client in its fulfillment of any legal requirement, including providing Client with access to personal data. Client agrees that IBM may transfer Client's personal data across a country border, including outside the European Economic Area (EEA). If the Cloud Service is included in IBM's Privacy Shield certification listed at [http://www.ibm.com/privacy/details/us/en/privacy\\_shield.html](http://www.ibm.com/privacy/details/us/en/privacy_shield.html) and Client chooses to have the Cloud Service hosted in a data center located in the United States, Client may rely on such certification for the transfer of personal data outside the EEA. Alternatively, the parties or their relevant affiliates may enter into separate standard unmodified EU Model Clause agreements in their corresponding roles pursuant to EC Decision 2010/87/EU (as amended or replaced, from time to time) with optional clauses removed. If IBM makes a change to the way it processes or secures personal data as part of the Cloud Services and such change causes Client to be noncompliant with data protection laws, Client may terminate the affected Cloud Services by providing written notice to IBM within 30 days of IBM's notification of the change to Client.

Client expressly accepts the terms of this agreement which include the following important commercial terms (i) limitation and disclaimer of liability for defects (Section 5 Warranties and Post Warranty Support), (ii) limitation of Client's entitlement to damages (Section 7 Liability and Indemnity), (iii) binding nature of export and import regulations (Section 9 Governing Laws and Geographic Scope), (iv) shorter limitation periods (Section 10 General), (v) exclusion of applicability of provisions on adhesion contracts (Section 10 General) and (vi) acceptance of the risk of a change of circumstances (Section 10 General).

Agreed to:	Agreed to:
Client Company Name:	IBM Company Name:
<b>Masarykův onkologický ústav</b>	<b>IBM Česká republika, spol. s r.o.</b>
By _____	By _____
Authorized signature	Authorized signature
Title: editel	Title: jednatel
Name (type or print): prof. MUDr. Jan Žaloudík, CSc.	Name (type or print): Martin Kotrus
Date: 4. 3. 2019	Date: 25. 2. 2019
Client number: 1722652	Agreement number: Z126-6548-CZ-8 10-2018
Company identification number:	Company identification number: 14890992
Client address:	IBM address:
<b>Masarykův onkologický ústav, Žlutý kopec 543/7, 656 53 Brno</b>	<b>V Parku 2294/4, 148 00 Praha 4 – Chodov, Česká republika</b>