SMLOUVA

číslo: **20200298**

uzavřená podle § 1746 odst. 2 zákona č. 89/2012 Sb., občanský zákoník
(dále také „občanský zákoník")

mezi těmito smluvními stranami:

Česká republika - Správa státních hmotných rezerv

sídlem:	Praha 5 – Malá Strana, Šeříková 616/1, PSČ 150 85
právně jednající:	Ing. Miroslav Basel, ředitel Odboru zakázek
IČO:	48133990
DIČ:	CZ48133990
bankovní spojení:	Česká národní banka, pobočka Praha
č. účtu:	85508881/0710
kontaktní osoba:	▮▮▮▮▮▮▮▮
telefon:	▮▮▮▮▮▮▮▮
e-mail:	▮▮▮▮▮▮▮▮
datová schránka:	4iqaa3x

(dále jen **„objednatel"**)

a

Obchodní firma   **AUTOCONT a.s.**

se sídlem:	Hornopolní 3322/34, Moravská Ostrava, 702 00 Ostrava
adresa pro doručování:	Líbalova 2348/1, 149 00 Praha 4
spisová značka:	B 11012 vedená u Krajského soudu v Ostravě
zastoupena:	Ing. Vítem Ševčíkem, na základě plné moci
IČO:	04308697
DIČ:	CZ04308697
bankovní spojení:	Česká spořitelna, a.s.
číslo účtu:	6563752/0800
kontaktní osoba:	▮▮▮▮▮▮▮▮
telefon:	▮▮▮▮▮▮▮▮
e-mail:	▮▮▮▮▮▮▮▮
datová schránka:	ctb7phe

(dále jen **„poskytovatel")**

(dále také společně **„smluvní strany"**)

ČR - Správa státních hmotných rezerv, Šeříková 616/1, 150 85 Praha 5 – Malá Strana, tel.: +420 222 806 111, fax: +420 251 510 314, IS DS: 4iqaa3x, e-mail: posta@sshr.cz, www.sshr.cz

1

Článek I.
Účel smlouvy

1. Účelem smlouvy je zajištění služeb spočívajících v prodloužení platnosti práva užití, upgrade a update licencovaného softwaru Nintex Workflow 2007 Enterprise Edition pro účely a k zajištění zákonné působnosti objednatele vyplývající ze zákona č. 97/1993 Sb., o působnosti Správy státních hmotných rezerv, ve znění pozdějších předpisů.

2. Touto smlouvou se realizuje veřejná zakázka, kterou objednatel zadal v otevřeném výběrovém řízení pod č. j. 03192/20-SSHR s názvem „20-005 Nintex Workflow 2007 Enterprise Edition".

Článek II.
Předmět smlouvy

1. Předmětem této smlouvy je zajištění služeb spočívajících v prodloužení platnosti práva užití, upgrade a update licencovaného softwaru Nintex Workflow 2007 Enterprise Edition dle rozsahu uvedeného v následující tabulce (dále také „služba"):

Množství	Popis produktu	Datum exspirace	Doba platnosti do
2 ks	**Software Assurance pro Nintex Workflow 2007 Enterprise Edition**	14. 6. 2020	14. 6. 2021

Součástí plnění je i zajištění licenčních klíčů pro servery, jejichž názvy předá objednatel poskytovateli do 5 pracovních dnů po podpisu smlouvy, a to prostřednictvím e-mailu.

2. Licenční podmínky platnosti práva užití, upgrade a update licencovaného softwaru Nintex Workflow 2007 Enterprise Edition jsou uvedeny v **Příloze č. 1** této smlouvy.

3. V případě, že vinou poskytovatele (neobjedná-li včas prodloužení platnosti licence) dojde ke ztrátě či znehodnocení licence, zavazuje se poskytovatel uhradit veškeré náklady na znovuobnovení či pořízení nové licence.

4. Objednatel se zavazuje dodanou službu převzít a zaplatit za ni cenu dle článku IV. této smlouvy.

5. Specifikace služby podle číselníku NIPEZ:

72260000-5 Služby související s programovým vybavením

6. Kontaktní osoba objednatele je oprávněna k plnění povinností objednatele dle této smlouvy písemně pověřit jiného zaměstnance objednatele. O tomto pověření je kontaktní osoba objednatele povinna písemně (i e-mailem) informovat kontaktní osobu poskytovatele. Kontaktní osoba objednatele nebo osoba, kterou kontaktní osoba objednatele písemně pověří, se zavazuje předmět smlouvy převzít na základě oboustranně podepsaného Protokolu o předání a převzetí předmětu smlouvy (dále také „předávací protokol").

Článek III.
Doba a místo plnění

1. Poskytovatel se zavazuje zahájit plnění služby dle této smlouvy nejpozději 1 kalendářní den následující po termínu uvedeném v tabulce v čl. II. odst. 1 této smlouvy, sloupec „Datum exspirace", tj. nejpozději dne 15. 6. 2020.

2. Doba plnění služby: 1 rok, tj. **od 15. 6. 2020 do 14. 6. 2021**.

3. Místem plnění této smlouvy je pracoviště objednatele na adrese:

- Na Bělidle 198/21, 150 00 Praha 5

ČR - Správa státních hmotných rezerv, Šeříková 616/1, 150 85 Praha 5 – Malá Strana, tel.: +420 222 806 111, fax: +420 251 510 314, IS DS: 4iqaa3x, e-mail: posta@sshr.cz, www.sshr.cz

2

Článek IV.
Cena předmětu plnění a platební podmínky

1. Cena za předmět smlouvy bez DPH je sjednána dohodou smluvních stran podle zákona č. 526/1990 Sb., o cenách, ve znění pozdějších předpisů, je cenou maximální a nepřekročitelnou. K této částce bude připočtena platná sazba DPH v době vzniku zdanitelného plnění.

   Cena za předmět smlouvy je dána nabídkou poskytovatele ze dne 20. 4. 2020 a je členěna následovně:

   a) celková cena ve výši **240.620 Kč bez DPH**

   (slovy: dvě stě čtyřicet tisíc šest set dvacet korun českých),

   b) DPH ve výši celkem 50.530,20 Kč

   (slovy: padesát tisíc pět set třicet korun českých dvacet haléřů),

   c) celková cena ve výši **291.150,20 Kč včetně DPH**

   (slovy: dvě stě devadesát jedna tisíc jedno sto padesát korun českých dvacet haléřů).

2. Cena za předmět smlouvy je ujednána pevnou částkou. Poskytovatel nemůže žádat změnu ceny proto, že si předmět smlouvy vyžádal jiné úsilí nebo jiné náklady, než bylo předpokládáno.

3. Cena za předmět smlouvy již zahrnuje veškeré daně, cla, poplatky a veškeré další výdaje spojené s provedením, včetně všech nákladů poskytovatele služeb na dopravu do míst plnění.

4. Platba záloh na cenu za předmět smlouvy se nepřipouští.

5. Právo na zaplacení ceny za předmět smlouvy vzniká poskytovateli datem zahájení plnění předmětu smlouvy dle čl. III. odst. 1 této smlouvy a podpisem předávacího protokolu, který podepíše kontaktní osoba poskytovatele a kontaktní osoba objednatele nebo osoba pověřená dle čl. II. odst. 6 této smlouvy. Předávací protokol bude přílohou faktury.

6. Smluvní strany se dohodly na bezhotovostním způsobu úhrady faktury za předmět smlouvy na účet poskytovatele uvedený v záhlaví smlouvy na základě daňového dokladu - faktury. Faktura bude zaslána do datové schránky objednatele nebo e-mailem na adresu epodatelna@sshr.cz. Nelze-li použít datovou schránku nebo tuto e-mailovou adresu, bude faktura zaslána prostřednictvím provozovatele poštovních služeb na adresu uvedenou v záhlaví této smlouvy. V případě zaslání do datové schránky nebo na uvedenou e-mailovou adresu, bude každá faktura zaslána samostatnou zprávou ve formátu pdf, příp. doc, xls.

7. Lhůta splatnosti faktury je 21 kalendářních dnů od doručení faktury objednateli, přičemž za den zaplacení se považuje den, kdy je fakturovaná částka připsána na účet poskytovatele.

8. Faktura musí obsahovat veškeré náležitosti stanovené zákonem č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů. Dále je poskytovatel povinen v daňovém dokladu (faktuře) uvést jako variabilní symbol číslo smlouvy, které vždy určuje objednatel, a toto číslo je uvedeno v záhlaví této smlouvy. V případě, že faktura nebude úplná nebo nebude obsahovat zákonem předepsané náležitosti, je objednatel oprávněn ji vrátit poskytovateli s tím, že poskytovatel je následně povinen vystavit novou bezvadnou a úplnou fakturu s novým termínem splatnosti. V takovém případě počne běžet doručením nové faktury objednateli nová lhůta splatnosti.

9. Poskytovatel prohlašuje, že účet uvedený v záhlaví této smlouvy je a po celou dobu trvání smluvního vztahu bude povinným registračním údajem dle zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů.

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3

Článek V.
Práva z vadného plnění

1. Poskytování služby je vadné, pokud je poskytovatelem poskytována jiná služba než ta, která je stanovena touto smlouvou, jejími přílohami a požadavky objednatele (např. v jiném rozsahu nebo kvalitě) nebo nejsou dodány licenční klíče pro servery dle čl. II odst. 1 této smlouvy.

2. Vady služby je objednatel povinen uplatnit u poskytovatele bez zbytečného odkladu po jejich zjištění, a to písemným sdělením v souladu s čl. VIII. odst. 5 této smlouvy. Vadu služby může uplatnit kontaktní osoba objednatele nebo osoba pověřená dle čl. II. odst. 6 této smlouvy i na e-mailové adrese poskytovatele ▇▇▇▇▇▇. Poskytovatel se zavazuje odstranit vady služby v přiměřené lhůtě stanovené objednatelem.

3. Uplatní-li objednatel právo z vadného plnění služby, potvrdí mu poskytovatel písemně, kdy toto právo uplatnil, jakož i provedení opravy a dobu jejího trvání. Nepotvrzení uplatnění práva z vadného plnění poskytovatelem do 3 pracovních dnů ode dne sdělení uplatnění vad je důvodem pro odstoupení objednatele od této smlouvy.

Článek VI.
Smluvní pokuta

1. Za vadné plnění předmětu smlouvy uhradí poskytovatel smluvní pokutu ve výši 0,5 % z ceny služby postižené vadným plněním.

2. V případě prodlení poskytovatele s plněním předmětu smlouvy uhradí poskytovatel smluvní pokutu ve výši 2.000 Kč za každý den prodlení.

3. Pro výpočet smluvní pokuty v odst. 1 tohoto článku se použije cena za předmět smlouvy uvedená v článku IV. odst. 1 a) této smlouvy.

4. Smluvní pokuta bude splatná do 14 kalendářních dnů od doručení jejího vyúčtování poskytovateli, na účet objednatele uvedený v záhlaví této smlouvy, není-li změněn písemným dodatkem dle článku VIII. odst. 4 této smlouvy.

5. Smluvní strany výslovně sjednávají, že objednatel je oprávněn započíst smluvní pokuty dle odst. 1 a 2 tohoto článku na úhradu ceny předmětu smlouvy dle čl. IV.

6. Poskytovatel prohlašuje, že smluvní pokuty dle této smlouvy včetně jejich výše považuje vzhledem k významu povinností (závazků), k jejichž zajištění byly dohodnuty, za přiměřené.

7. Smluvní strany výslovně sjednávají, že úhradou smluvní pokuty nebude dotčeno právo objednatele na náhradu škody vzniklé z porušení povinnosti, ke kterému se smluvní pokuta vztahuje, v plné výši.

Článek VII.
Odstoupení od smlouvy

1. Kromě důvodů pro odstoupení od smlouvy objednatelem uvedených v jiných ustanoveních této smlouvy nebo občanském zákoníku je objednatel oprávněn od této smlouvy odstoupit v případě prodlení s plněním předmětu smlouvy delším než 10 pracovních dnů od požadovaného zahájení plnění dle čl. III. odst. 1 této smlouvy.

2. Objednatel je oprávněn odstoupit od této smlouvy, neodstraní-li poskytovatel vadu služby včas nebo vadu služby odmítne odstranit.

3. Objednatel je též oprávněn odstoupit od smlouvy z důvodu probíhajícího insolvenčního řízení vůči poskytovateli.

4. Objednatel je oprávněn odstoupit od smlouvy i v případě porušení povinnosti poskytovatele uvedené v čl. IV. odst. 9 této smlouvy.

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4

5. Smluvní strany se dohodly, že při prodlení objednatele se zaplacením ceny za předmět smlouvy v délce více než 30 kalendářních dnů, má poskytovatel právo od této smlouvy odstoupit.

6. Odstoupení od smlouvy musí být učiněno písemně v souladu s čl. VIII. odst. 5 této smlouvy. Účinky odstoupení od smlouvy nastávají dnem doručení písemného oznámení o odstoupení druhé smluvní straně.

7. Odstoupení od této smlouvy se nedotýká práva na zaplacení smluvní pokuty nebo úroku z prodlení, ani práva na náhradu způsobené újmy.

8. V případě odstoupení od smlouvy se odstoupení nevztahuje na smluvními stranami již poskytnuté vzájemné plnění.

Článek VIII.
Závěrečná ustanovení

1. Smluvní strany se dohodly, že další skutečnosti touto smlouvou neupravené se řídí příslušnými ustanoveními občanského zákoníku.

2. Poskytovatel souhlasí s tím, aby tato smlouva, včetně jejích případných dodatků, byla uveřejněna na internetových stránkách objednatele. Údaje ve smyslu § 218 odst. 3 zákona č. 134/2016 Sb., o zadávání veřejných zakázek, ve znění pozdějších předpisů, budou znečitelněny (ochrana informací a údajů dle zvláštních právních předpisů). Smlouva se vkládá do registru smluv vedeného podle zákona č. 340/2015 Sb., o zvláštních podmínkách účinnosti některých smluv, uveřejňování těchto smluv a o registru smluv, ve znění pozdějších předpisů (zákon o registru smluv). Uveřejnění smlouvy zajišťuje objednatel.

3. Poskytovatel souhlasí, aby objednatel poskytl část nebo celou tuto smlouvu v případě žádosti o poskytnutí informace podle zákona č. 106/1999 Sb., o svobodném přístupu k informacím, ve znění pozdějších předpisů.

4. Veškeré změny nebo doplňky této smlouvy (včetně změny bankovního spojení, změny sídla, změny právně jednající osoby nebo zastoupení smluvní strany atd.) jsou vázány na souhlas smluvních stran a mohou být provedeny, včetně změn příloh, po vzájemné dohodě obou smluvních stran pouze formou písemného dodatku k této smlouvě. Smluvní dodatky musí být řádně označeny, pořadově vzestupně číslovány, datovány a podepsány oprávněnými zástupci obou smluvních stran. Nemůže jít k tíži smluvní strany, které nebyl v souladu s touto smlouvou zaslán dodatek ohledně změny údajů v záhlaví smlouvy, že i nadále užívá při komunikaci s druhou smluvní stranou údaje původně uvedené.

5. Smluvní strany sjednávají pravidla pro doručování vzájemných písemností tak, že písemnosti se zasílají v elektronické podobě prostřednictvím datových schránek. Nelze-li použít datovou schránku, zasílají se prostřednictvím provozovatele poštovních služeb na adresu uvedenou v záhlaví této smlouvy. Pro případy uvedené v čl. II. odst. 1 a odst. 6, čl. III odst. 3 a čl. V. odst. 2 této smlouvy sjednávají smluvní strany komunikaci prostřednictvím e-mailových adres kontaktních osob uvedených v záhlaví smlouvy. Pro účel uvedený v čl. IV odst. 6 této smlouvy sjednávají smluvní strany možnost elektronické komunikace prostřednictvím e-mailové adresy objednatele epodatelna@sshr.cz.

6. Tato smlouva je platná dnem, kdy podpis připojí smluvní strana, která ji podepisuje jako poslední.

7. Smluvní strany prohlašují, že se s obsahem této smlouvy před jejím podpisem řádně seznámily, že smlouva nebyla podepsána v tísni, ani za nápadně nevýhodných podmínek. Naopak byla uzavřena podle jejich pravé a svobodné vůle. Na důkaz toho připojují oprávnění zástupci smluvních stran své podpisy.

8. Nedílnou součástí smlouvy jsou přílohy:

Příloha č. 1 - Licenční podmínky platnosti práva užití, upgrade a update licencovaného softwaru Nintex Workflow 2007 Enterprise Edition

Příloha č. 2 – Plná moc

V Praze dne: 7. 5. 2020

Za objednatele:

**Česká republika –
Správa státních hmotných rezerv**

V Praze dne: 7. 5. 2020

Za poskytovatele:

AUTOCONT a.s.

……………………………………….

Ing. Miroslav Basel
ředitel Odboru zakázek

………………………………………

Ing. Vít Ševčík
obchodní ředitel EBS, na základě plné moci

ČR - Správa státních hmotných rezerv, Šeříková 616/1, 150 85 Praha 5 – Malá Strana, tel.: +420 222 806 111, fax: +420 251 510 314, IS DS: 4iqaa3x, e-mail: posta@sshr.cz, www.sshr.cz

6

Příloha č. 1 – Licenční podmínky platnosti práva užití, upgrade a update licencovaného softwaru Nintex Workflow 2007 Enterprise Edition

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7

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of the Software non infringing (as the case may be) PROVIDED THAT the identified defect or infringement has not been caused by: (x) any modification, variation or addition to the Software not performed by Nintex; (y) incorrect use, abuse or corruption of the Software; or (z) the use of the Software with other software or on equipment with which it is incompatible. Customer must provide sufficient information about any defect to enable Nintex to reproduce it on Nintex's systems.

2.3   Customer's Acknowledgement. Customer acknowledges that the Software in general is not free of errors or defects and agree that the existence of any errors or defects will not constitute a breach of this Agreement.

2.4   Viruses. Nintex does not warrant that the Software is free from all known viruses. Although Nintex has used commercially reasonable efforts to check for the most commonly known viruses,

Customer is solely responsible for virus scanning the Software.

3.   Confidentiality

3.1   Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, in connection with Software, that is designated as confidential or that reasonably should be understood by the Receiving Party to be confidential given the nature of the information and the circumstances of disclosure. Nintex Confidential Information includes the Software and Software Documentation. Confidential Information of each Party includes code, business and marketing plans, financial information, technology and technical information, inventions, know-how, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation

owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

3.2   Confidentiality Obligations. Customer acknowledges that the ideas and expressions contained in the Software and any modifications or particulars of those ideas and expressions that may be provided to Customer by Nintex are confidential (except to the extent that such information has entered the public domain other than through a breach of this Agreement by Customer). Customer undertakes not to disclose this Confidential Information to any person other than its agents and employees and then only to enable the Software to be used in accordance with and for the purposes of this Agreement. Customer must ensure that these persons maintain this confidentiality.

3.3   Copyright and Confidentiality Notices. Customer must not remove, delete or obscure any copyright notices or confidentiality notices on or in the Software.

4.   Support

Nintex will provide Customer with Support in accordance with the Support Documentation or a separate agreement between the Parties.

5.   Intellectual Property (IP)

5.1   Rights in IP. Customer acknowledges that Customer obtains no IP in the Software or the Support. As between the Parties, all IP in the Software and the Support vests in Nintex.

5.2   Impermissible Actions. Customer shall not, except to the extent, if any, permitted by any law: (a) copy, modify, enhance or reproduce any part of the Software, in whole or in part (other than in accordance with **clause 1.2**) or create a derivative work of any part of the Software; (b) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever; (c) incorporate, embed, combine, merge or bundle the Software with any other hardware or software (except to the extent strictly necessary to use the Software in accordance with its intended purpose and these terms); (d) publically disseminate performance information or analysis from any source relating to the Software; (e) use the Software to develop a product which is competitive with any Nintex product offerings; or (f) directly or indirectly permit any third party to do any of the above.

Nintex End User License Agreement (April 2016)

5.3   IP Obligations. If Customer becomes aware of any infringements or suspected infringements by any third party of any IP in the Software or Support, Customer must immediately notify Nintex. Customer must at Nintex's request and expense take any action as Nintex reasonably deems is appropriate to protect its IP.

6.   Termination

6.1   Termination. Nintex may terminate this Agreement immediately by notice if Customer breaches this Agreement and fails to remedy the breach within fourteen (14) days of becoming aware of the breach.

6.2   Effect of Termination. On termination of this Agreement, Customer must immediately cease to use the Software and, if possible, return the Software (and all copies) to Nintex. Where the Software cannot be returned, Customer must permanently delete or destroy the Software and provide to Nintex a declaration that Customer has complied with this **clause 6.2**. This requirement is without prejudice to any other rights and remedies that Nintex may have in respect of the breach. **Clauses 3, 5, 7, 8** and **9** survive the expiry or termination of this Agreement. **Clause 3.1** expires three (3) years after the date of termination or expiry of this Agreement.

7.   Taxes and Export Restrictions

**7.1   **Unless expressly stated to the contrary, all fees, costs and charges referred to in this Agreement are exclusive of all taxes, duties and imposts.

**7.2   **If Nintex is or will be liable for any taxes, duties or imposts (including goods and services tax or value added tax) on or relating to this Agreement or anything done pursuant to this Agreement (excluding income tax) then Customer must pay Nintex an amount equal to that liability at the time that Customer pays any fees, costs or charges to which the liability relates.

7.3   Export Compliance. The Software and other technology Nintex makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer shall not, and shall not allow any third party to, export from the United States or allow the re-export or re-transfer of any part of the Software in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan, or Syria) or in violation of any U.S. export law or regulation, or any export or import laws, regulations, or requirements of any United States or foreign agency or authority.

8.   LIMITATION OF LIABILITY

8.1 IN NO EVENT WILL NINTEX BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY LOST PROFITS, LOST SAVINGS, DELETION OR CORRUPTION OF ELECTRONICALLY STORED INFORMATION, LOST DATA, OR OTHER SPECIAL, DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SOFTWARE, SUPPORT OR OTHER PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT OR THE USE THEREOF, EVEN IF NINTEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.2 NINTEX'S AGGREGATE LIABILITY UPON ANY CLAIMS HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SOFTWARE, SUPPORT OR OTHER PRODUCTS OR SERVICES FURNISHED OR TO BE FURNISHED BY NINTEX UNDER THIS AGREEMENT WILL IN ANY EVENT BE ABSOLUTELY LIMITED TO THE AMOUNT PAID BY CUSTOMER TO NINTEX UNDER THIS AGREEMENT FOR THE APPLICABLE SOFTWARE, SUPPORT OR OTHER PRODUCTS OR SERVICES.

8.3 NINTEX ACKNOWLEDGES THAT IT HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE WARRANTIES, DISCLAIMERS AND LIMITATION OF LIABILITY SET OUT IN THIS AGREEMENT, AND THAT THESE FORM AN ESSENTIAL BASIS OF THE BARGAIN REACHED BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY SPECIFIED IN THIS **CLAUSE 8** WILL SURVIVE AND APPLY EVEN IF ANY CLAUSE IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. NOTWITHSTANDING THIS, NOTHING CONTAINED IN THIS AGREEMENT WILL LIMIT NINTEX'S LIABILITY FOR ITS OWN WILLFUL OR WANTON CONDUCT.

8.4 NINTEX MAKES NO WARRANTY OR REPRESENTATION TO CUSTOMER AS TO THE PERFORMANCE OR OPERATION OF THE SOFTWARE, SUPPORT OR ANY OTHER PRODUCTS OR SERVICES EXCEPT AS PROVIDED IN **CLAUSE 2.1**. NINTEX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO NINTEX, THE SOFTWARE, SUPPORT OR OTHER PRODUCTS OR SERVICES PROVIDED BY NINTEX AND, SUBJECT TO THIS CLAUSE, ANY CONDITION OR WARRANTY WHICH WOULD OTHERWISE BE IMPLIED IN THIS AGREEMENT IS HEREBY EXCLUDED. WHERE LEGISLATION IMPLIES IN THIS AGREEMENT ANY CONDITION OR WARRANTY, AND THAT LEGISLATION AVOIDS OR PROHIBITS PROVISIONS IN A CONTRACT EXCLUDING OR MODIFYING THE APPLICATION OF OR EXERCISE OF OR LIABILITY UNDER SUCH CONDITION OR

WARRANTY, THAT CONDITION OR WARRANTY WILL BE DEEMED TO BE INCLUDED IN THIS AGREEMENT. HOWEVER, NINTEX'S LIABILITY FOR ANY BREACH OF SUCH CONDITION OR WARRANTY WILL BE LIMITED, AT ITS OPTION, TO ONE OR MORE OF THE FOLLOWING: (A) IF THE BREACH RELATES TO GOODS: (I) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (II) THE REPAIR OF SUCH GOODS; (III)THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (IV) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; AND (B) IF THE BREACH RELATES TO SERVICES: (I) THE SUPPLYING OF THE SERVICES AGAIN; OR (II) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

8.5 DESPITE ANY OTHER PROVISION IN THIS AGREEMENT, NINTEX DOES NOT EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT THAT THE SAME ARISES DIRECTLY FROM ITS NEGLIGENCE OR THE NEGLIGENCE OF ITS EMPLOYEES.

9. Mutual IndemnificationNintex Indemnification. Nintex will defend Customer from and against any claim by a third party alleging that the Software, when used as authorized in this Agreement, infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold Customer harmless from and against any damages and costs (including reasonable attorneys' fees) actually awarded against Customer or agreed to by Nintex in settlement resulting from such claim, provided that Nintex shall have received from Customer: (a) prompt written notice of such claim (but in any event notice in sufficient time for Nintex to respond without prejudice); (b) the sole and exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (c) all reasonably necessary cooperation, at Nintex's cost, from Customer. If Customer's use of the Software is (or in Nintex's opinion is likely to be) enjoined, if required by settlement or if Nintex determines such actions are reasonably necessary for Customer to avoid material liability, Nintex may, in its sole discretion, substitute for the Software substantially functionally similar programs and documentation or otherwise procure for Customer the right to continue using the Software. The obligations in this **section 9.1** shall not apply: (u) if the Software is modified by any party other than Nintex, but solely to the extent the alleged infringement is caused by such modification; (v) if the Software is combined with products or processes not provided or authorized by Nintex, but solely to the extent the alleged infringement is caused by such combination; (w) to any unauthorized use of the Software; (x) to any unsupported release of the

Software; (y) to any third party code contained within the Software; or (z) if Customer settles or makes any admissions with respect to a claim without prior written consent from Nintex. THIS **SECTION 9.1** SETS FORTH NINTEX'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2   Indemnification by Customer. Customer will defend, indemnify, and hold Nintex harmless from any claims made or brought by a third party: (a) based upon breach of this Agreement by Customer, its employees and its users resulting in the disclosure of Confidential Information, as defined in **section 3.1**; (b) alleging that the Customer Content infringes the rights of, or has caused harm to a third party; or (c) in connection with a claim arising from use of the Software in breach of this Agreement by Customer or its employees; provided, however, that Customer has received from Nintex: (x) prompt written notice of such claim (but in any event notice in sufficient time for Customer to respond without prejudice); (y) the sole and exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim (provided that Customer may not settle any claim unless such settlement unconditionally releases Nintex of all liability); and (z) all reasonably necessary cooperation (at Customer's cost) from Nintex.

10.   General

10.1   Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes all prior communications in connection with that subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both Parties. The Parties acknowledge that, except as expressly stated in this Agreement, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the other Party in relation to this Agreement.

10.2   Authorization. Each Party warrants that it has the authority, power and capability to enter into and to perform its obligations under this Agreement and that its obligations under this Agreement are binding and enforceable.

10.3   Force Majeure. Neither Party will be liable for any failure to perform its obligations under this Agreement (other than an obligation to pay money) if the Party is prevented from doing so by any cause beyond its reasonable control.

10.4   Severability. Each term of this Agreement must be interpreted in such manner as to be effective and valid under applicable law. If any term of this Agreement is held to be prohibited by or invalid under applicable law, that term is ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

10.5   Waiver. A term of this Agreement may not be waived except in writing signed by the Party granting the waiver. The waiver by a Party of a breach by another Party of any term of this Agreement does not operate as a waiver of another or continuing breach by that Party of that term or any other term of this Agreement.

10.6   Assignment. Customer must not assign or novate any of Customer's rights or obligations under this Agreement without Nintex's prior written consent (which Nintex may withhold in its absolute discretion). Nintex may assign or novate any of its rights or obligations under this Agreement to any person by notice to Customer.

10.7   Choice of Law and Jurisdiction. Excluding conflict of laws rules, this Agreement shall be governed by and construed under (a) the laws of the State of Washington, U.S. if Customer is located in North or South America, (b) the laws of the state of Victoria, Australia if Customer is located in Asia or Australia, or (c) the laws of England and Wales if Customer is located outside of North or South America, Asia and Australia. All disputes arising out of or in relation to this Agreement shall be submitted to the exclusive jurisdiction of the courts of (i) Seattle, Washington when the laws of Washington apply, (ii) Melbourne when the laws of Australia apply, or (iii) London when the laws of England and Wales apply. Nothing in this section shall restrict Nintex's right to bring an action (including for example a motion for injunctive relief) against Customer in the jurisdiction where Customer's place of business is located. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction, do not apply to this Agreement.

11.   Definitions

 "Affiliate(s)" mean(s), with respect to either Party, any individuals, companies, corporations, partnerships or other entities, directly or indirectly, controlling, controlled by, or under common control with, such party.

 "Customer Content" means the business information or other data used by Customer in connection with the Software.

"Intellectual Property" (or IP) means:

(a) patents, trademarks, services marks, design rights (whether registered or unregistered and including any applications for these rights);

(b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;

(c) trade or business names; and

(d) know-how, Confidential Information and trade secrets, and any other similar rights or obligations whether registrable or not in any country**.**

"License Fee" means the relevant license fee for the Software.

"Material" means material in any form, including documents, reports, products, equipment, information, data, source code, software, software tools, and methodologies.

"Software" means Nintex's software product and includes the Software Documentation and all other associated Material provided by Nintex in relation to that software.

"Software Documentation" means any documentation provided by Nintex which is incorporated in or associated with software.

"Software License" means a non-exclusive, nontransferable license to use the Software in accordance with this Agreement.

"Support" means the support, assurance, new releases and related maintenance services for the Software described in the Support Documentation and includes the Support Documentation and all other associated Material provided by Nintex in relation to that support.

"Support Documentation" means any documentation provided by Nintex which is incorporated in or associated with Support.

Support Policy – On-Premise Perpetual License Software

I. Overview

This Support Policy (**"Support Policy"**) describes the policies and procedures under which Nintex ("**Nintex**") provides technical support and maintenance services ("**Support**") for its proprietary on-premises server software product(s) ("**Software**") to its customers (each, a "**Customer**").

Support is provided for the Software pursuant to the separate End User License Agreement ("**EULA**") and Order Form under which Customer has purchased Support and is subject to the terms and conditions of that EULA, Order Form, and the terms of this Support Policy. Support is provided for the term specified in the Order Form. If Support is terminated, Nintex's obligation to provide Support will cease at that time.

Support is provided through Nintex's online web-based support portal located at http://www.nintex.com/support ("**Support Portal**") and telephonically, as indicated in Annexes A, B, and C to this Support Policy (each, an "**Annex**" and collectively, the "**Annexes**").

This Support Policy sets forth expectations for Support between the Customer organization and Nintex's Support organization, including:

    A.   Who is authorized to submit issues;

    B.   How to submit issues;

    C.   What types of issues are supported; and

    D.   How and when Nintex resolves and closes reported issues.

II. Definitions.

    A.   <u>Contact</u>: means qualified individuals knowledgeable in the internal systems, tools, policies, and practices in use by Customer and proficient users of the Software. Customers are expected to make every effort to ensure that the individuals that are designated as authorized contacts are qualified to support the Customer teams internally.

    B.   <u>Documentation</u>: means Nintex's online user guides, documentation, and help and training materials, as updated from time to time, accessible via https://community.nintex.com or the Support Portal.

    C.   <u>Incident</u>: means each individual issue with the Software or associated products reported to Nintex.

    D.   <u>Product Releases</u>: are specific versions of the core Software product.

    E.   <u>Releases</u>: are updates to the Software that provide: (1) new features, modifications, or enhancements to the Software; (2) updates to features, code corrections, patches, and other general updates of the Software; or (3) fixes to the Software. Releases do not include separate or different products marketed by Nintex under a different name, i.e., Nintex Hawkeye® is not a Release of Nintex for SharePoint 2016.

III. Scope of Support

    A.   <u>What Support Includes</u>. If Customer is current on payment for the Support, Nintex shall provide Customer with Support consisting of the following:

        1. Web and phone-based submissions of Incidents, if entitled, submitted as specified in the applicable Annex;

        2. Releases and Product Releases of the Software;

        3. The Documentation, including an online knowledge base of information and solutions that provides up-todate information on the Software and a forum where Customer, partners, and other users of Nintex's Software and other products can share information and ideas about how to use the Software;

        4. Access to an online secure site that contains existing cases, and

        5. Guidance and troubleshooting to Customer in connection with questions and issues arising from the following Customer activities with respect to the Software:

           a.   Basic Configuration Issues: Nintex will troubleshoot Customer's configuration settings for existing installations of Supported Products (as defined below in section III.C) to ensure proper operation and connectivity.

b. Usage Issues: Nintex will answer Customer's "how to" questions related to standard and intended Software usage.

c. Efforts to Correct the Software: Nintex will make commercially reasonable efforts to correct bugs or other errors in the Software. Customer acknowledges that Nintex is not required to correct every bug, error, or problem with the Software that it reports to Nintex or of which Nintex is otherwise made aware and that Nintex does not guarantee resolution times.

B. <u>What Support Excludes.</u> Customer acknowledges that if a non-supported Incident is submitted, they may be referred to their Partner of record or another authorized Nintex Partner. If Customer chooses to engage their Partner or another authorized Nintex Partner, any costs associated with the resolution of non-supported Incidents will be Customer's responsibility. The following are excluded from Nintex Support obligations:

1. Altered or modified Software, unless altered or modified by Nintex;

2. Software that has not been installed, operated, or maintained in accordance with the Documentation;

3. Troubleshooting of Microsoft, third party, or open standards based technologies, such as XML, HTML/CSS, SharePoint, BizTalk, Active Directory, middleware, SQL queries, database connectivity, or Java scripts; and

4. Custom solutions or actions.

C. <u>Software Versions Covered</u>.

1. <u>Supported Versions</u>: Nintex will provide Support only for the Software products specified in this Support Policy. Nintex supports use of the Software only as specified in the Documentation. Nintex's Support obligations do not cover hardware, operating systems, networks, or third-party software. Customer understands that Nintex may need additional information as to Customer's use of the Software during the term of this Support Policy.

2. <u>End of Life</u>: Nintex will provide Support of a Product Release or Release for twelve (12) months after issuance of the end of life notice. After such time, Nintex will provide limited Support to the Customer for an additional twelve (12) months consisting solely of troubleshooting issues, identifying work arounds, and resolving critical Security Issues.

3. <u>Supported Product Versions</u>: Nintex will provide Support for the current and the preceding Product Release (N-1) for all on-premises products.

D. <u>Lapsed Support</u>. Support may be reinstated after any lapse due to termination or expiration of Support upon payment of: (1) the then-current annual fee for Software Assurance (Annex A), (2) a 20% reinstatement fee; and (3) the then-current fee for Software Assurance for the time period during which no Support was in effect, up to a maximum of two (2) years.

E. <u>Additional Support</u>. If Software Assurance is current and paid in full, a higher level of Support, Premium (Annex B) or Platinum (Annex C), can be added at any time.

IV. Incident Submission and Resolution

Customer shall obtain Support by reporting Incidents. Incidents shall be tracked from initial report through final resolution.

A. <u>Submitting Incidents</u>

1. <u>Who May Submit Incidents</u>?

Support is intended to provide assistance for issues and questions beyond what is covered in the Documentation. At the time of purchase, Customer may designate as many authorized Contacts as required. However, anyone employed and authorized by the Customer may be added at any time through the customer portal or by submitting a request through the support process outlined in this Support Policy.

2. <u>Customer Obligations</u>.

a. Customer will ensure that when an authorized Customer Contact submits an Incident, that individual will have full access and permissions required to troubleshoot the Incident and is authorized to make recommended changes to the Customer's network, and/or applicable Products to help troubleshoot or resolve the issue.

b. Customer will give Nintex reasonable access to the Product and systems where the Software is deployed as necessary for Nintex to determine the cause of the problem and find a resolution. Customer is solely responsible for Customer's data, information, and software, including making back-up copies and security. Nintex recommends Customers create backup copies of configuration files before any work is performed.

c. Customer acknowledges that not implementing a Release may render the Software unusable or nonconforming and Customer assumes all risks arising from the failure to install such Software Updates. Even if Customer has paid the applicable fees, Nintex will not be required to provide Support if Customer has not properly implemented all Releases provided by Nintex.

3. How to Submit Incidents.

Unless otherwise specified in a supplemental support plan purchased by Customer, Incidents are to be submitted to Nintex by an authorized Contact through the Support Portal or via phone, based on the level of Support purchased by Customer, as outlined in the applicable Annex.

4. How to Report an Incident.

In order to expedite the resolution of Incidents, Nintex expects that Customer will make every attempt possible to:

a. Verify that the Incident is reproducible (as applicable).

b. Provide information necessary to help Nintex track, prioritize, reproduce, or investigate the Incident.

c. Provide a full description of the issue and expected results.

d. Categorize issues (technical question, defect, license request, enhancement request, etc.).

e. List steps to reproduce the issue and relevant data.

f. Provide any applicable log files (de-identified of sensitive data if appropriate).

g. Provide exact wording of all issue-related error messages.

h. Describe any special circumstances surrounding the discovery of the issue, e.g., first occurrence or occurrence after a specific event, frequency of occurrence, business impact of the problem on Customer, and suggested urgency.

i. Identify any existing Incident number in any ongoing communications with Nintex.

B. Support Response and Incident Resolution

1. Nintex Incident Response.

For each Incident reported by Customer in accordance with these procedures, Nintex shall:

a. Confirm receipt of the reported Incident within the acknowledgement time specified in the applicable Annex.

b. Set a Priority Level for the Incident in accordance with the terms in section IV.B.2 below.

c. Use commercially reasonable efforts to respond to the Incident within the time specified in the applicable Annex.

d. Analyze the Incident and, as applicable, verify the existence of the problem(s) resulting in the Incident, which may include requesting that Customer provide additional information, logs, and re-execution of commands to help identify the root cause and dependencies of the reported issue.

e. Give Customer direction and assistance in resolving the Incident.

f. Keep a record of ongoing communications with Customer.

g. Use commercially reasonable efforts to respond to the Incident in accordance with the Initial Response times set forth in the applicable Annex.

h. Upon request of Customer, discuss Severity Level and ongoing communication time frame. Nintex may modify the Incident's Severity Level at its sole discretion.

2. Severity Levels.

Nintex will prioritize Incidents according to the following criteria:

- Severity 1 ("**S1**") is the highest priority and receives first attention. S1 Incidents are to be submitted when Customer cannot access the Software.

- Severity 2 ("**S2**") indicates a reported Incident where the issue has severely impacted the performance of the Software's intended use and is causing a material and adverse impact to the majority of Customer's users; or Software is not operating in a material respect within the documented functionality and it is impacting the majority of Customer's users or deployed Workflows.

- Severity 3 ("**S3**") indicates a reported Incident where the issue has an impact on the performance and/or functionality of the Software that is impacting a minority of Customer's users or deployed Workflows.

- Severity 4 ("**S4**") indicates a reported Incident requesting assistance and may include questions of how to use the Software. It may also include a reported Incident where the Software is operating within the documented functionality and Customer would like to record an idea for inclusion in future releases. Nintex will not provide feedback on such enhancement requests, and these Support Cases are closed once the information has been recorded in our Product Request tool.

3. Resolution and Closure of Incidents.

Incidents shall be closed in the following manner:

a. For solvable issues, depending on the nature of the issue, the resolution may take the form of an explanation, recommendation, usage instructions, workaround instructions, or advising Customer of an available release that addresses the issue.

b. In the event that custom or unsupported plug-ins, modules, or custom code is used, Nintex may ask, in the course of attempting to resolve the issue, that Customer remove any unsupported plug-ins, modules, or custom code. If the problem disappears upon removal of an unsupported plug-in or module, then Nintex may consider the issue to be resolved. Supported plug-ins or modules are defined as those listed and defined as supported in in the Documentation.

c. For issues outside of scope as outlined in this document, Nintex may close issues by identifying the Incident as outside the scope of Support.

d. Dropped Issues. Nintex may close an Incident if the Contact has not responded after two (2) weeks from the date that Nintex requested additional information required to solve the Incident. Customer may request Incidents be re-opened. At Nintex's sole discretion, Incidents will be re-opened for further investigation if the Incident is deemed to be solvable.

Annex A

Software Assurance

SUPPORTED SOFTWARE	
Supported Software	All Nintex Products with valid Support entitlement
POLICY TERMS	
Effective Coverage Hours	Full work week in local time zone Monday – Friday
Business Hours (Americas)	6AM – 5PM, Pacific Time, Monday – Friday Limited support during Nintex events and holidays
Business Hours (EMEA)	8AM – 5PM, GMT, Monday – Friday Limited support during Nintex events and holidays
Business Hours (APAC)	8AM – 5PM, Australian Eastern Time, Monday – Friday Limited support during Nintex events and holidays
Supported Channels	Online – nintex.com/nintex-support
Escalations	CSM@nintex.com
TARGET RESPONSE TIMES DURING BUSINESS HOURS	
Initial Response Time	S1 – 8 Hours S2 – 1 Business day S3 – 2 Business day S4 – Best effort
DEVELOPMENT LICENSES	
Development Licenses	1 per Production License

Annex B

Premium Support

SUPPORTED SOFTWARE	
Supported Software	All Nintex Products with valid Support entitlement
POLICY TERMS	
Effective Coverage Hours	Full work week in local time zone Monday – Friday
Business Hours (Americas)	4PM Sunday – 5PM Friday, Pacific Time, Limited support during Nintex events and holidays
Business Hours (EMEA)	12AM Monday – 1AM Saturday, GMT Limited support during Nintex events and holidays
Business Hours (APAC)	8AM Monday – 9AM Saturday, Australian Eastern Time Limited support during Nintex events and holidays
Supported Channels	Online - nintex.com/nintex-support Phone – Outbound ONLY
Escalations	CSM@nintex.com
TARGET RESPONSE TIMES DURING BUSINESS HOURS	
Initial Response Time	S1 – 4 Hours S2 – 8 Hours S3 – 1 Business day S4 – 2 Business days
DEVELOPMENT LICENSES	
Development Licenses	Unlimited

Annex C

Platinum Support

SUPPORTED SOFTWARE	
Supported Software	All Nintex Products with valid Support entitlement
POLICY TERMS	
Effective Coverage Hours	Full work week in local time zone Sunday - Saturday
Business Hours (Americas)	24x7 Limited support during Nintex events and holidays
Business Hours (EMEA)	24x7 Limited support during Nintex events and holidays
Business Hours (APAC)	24x7 Limited support during Nintex events and holidays
Supported Channels	Online – nintex.com/nintex-support Phone – Americas - +14255332827 EMEA - +442036955056 APAC - +61388205139
Escalations	CSM@nintex.com
TARGET RESPONSE TIMES DURING BUSINESS HOURS	
Initial Response Time	S1 – 2 Hours S2 – 4 Hours S3 – 8 Hours S4 – 1 Business day
DEVELOPMENT LICENSES	
Development Licenses	Unlimited

AUTOCONT

PLNÁ MOC

Zmocnitel: **AUTOCONT a.s.**
se sídlem: Hornopolní 3322/34, Moravská Ostrava, 702 00 Ostrava
IČ: 04308697
zapsaná v obchodním rejstříku vedeném Krajským soudem v Ostravě,
oddíl B, vložka 11012
zastoupená Jaroslavem Biolkem, členem představenstva, třída A,
a Ondřejem Matuštíkem, členem představenstva, třída B

Zmocněnec: Vít Ševčík
funkce: Obchodní ředitel EBS
trvale bytem: ▨▨▨▨▨▨▨▨▨▨▨▨

Zmocnitel tímto uděluje Zmocněnci plnou moc aby

- Zastupoval ve všech věcech obchodní povahy a ve věcech právních jednání obchodní povahy, které se týkají podávání či přijímání nabídek, uzavírání a podepisování smluv, při jednání s úřady, orgány veřejné správy, orgány státní správy a orgány místní samosprávy, jakož i s právnickými a fyzickými osobami.

Zmocněnec je oprávněn vykonávat veškeré úkony s výše uvedeným související, zejména přijímat doručované písemnosti, podávat návrhy a žádosti, účastnit se jednání s třetími stranami, uznávat uplatněné nároky, vzdávat se nároků, podávat opravné prostředky, námitky nebo rozklad a vzdávat se jich, vymáhat nároky, plnění nároků přijímat, jejich plnění potvrzovat, to vše i tehdy, když je podle předpisů zapotřebí zvláštní plné moci

Tato plná moc se uděluje na dobu určitou do 31. 3. 2021. K zániku této plné moci dojde též ukončením pracovního poměru Zmocněnce ke Zmocniteli.

Zmocnitel je oprávněn tuto plnou moc kdykoliv odvolat.

Zmocněnec není oprávněn udělit v rozsahu výše uvedeného zmocnění nebo jeho části další plnou moc.

V Praze

AUTOCONT a.s.
Jaroslav Biolek,
člen představenstva, třída A

AUTOCONT a.s.
Ondřej Matuštík,
člen představenstva, třída B

Výše uvedené zmocnění bez výhrad přijímám a současně potvrzuji, že jsem obeznámen s interními pravidly Zmocnitele týkajícími se jednání za společnost a zavazuji se tato pravidla dodržovat a jsem si vědom následků plynoucích z porušení těchto pravidel.

V Praze

Vít Ševčík