General Terms and Conditions (GTC)

IBM iX Germany GmbH, Chausseestraße 5, 10115 Berlin
IBM iX Austria GmbH, Carl-Blum-Straße 3, 4600 Wels

IBM iX

1. Scope of application

1.1 The following General Terms and Conditions ("GTC") apply to all contracts for work (*Werkverträge*) and/or services (*Dienstverträge*) of the aforementioned IBM iX entities. The IBM iX entity concluding the contract (IBM iX Germany GmbH or IBM iX Austria GmbH) is hereinafter referred to as "IBM iX".

1.2 The following GTC apply exclusively. The Client's general terms and conditions do not apply unless their validity is expressly recognised by IBM iX in writing.

1.3 A contract subject to these GTC is concluded (i) by an order form or offer being signed by the Client and IBM iX or (ii) by means of a written order from the Client and the Client's receipt of a corresponding order confirmation from IBM iX (hereinafter collectively referred to as the "Agreement").

1.4 If agreed, IBM iX will provide the following services in the areas of strategy, design and technology for marketing, IT, sales or customer services:

- Consulting and planning in the areas of digital transformation, process optimisation, service and platform development, online marketing, digital communication, e-commerce as well as artificial intelligence (AI), cloud and web technology.
- Creation or support in the creation of concepts as well as requirement and functional specifications in the sense of an agile project working method.
- Conducting and supporting analyses, research, assessments, user research and the development of data-based concepts.
- Creation or support in the creation of design strategies, design systems, creative drafts and layouts for the visual realisation of projects.
- Creation or support in the creation of content strategies, omni-channel journeys as well as content production and editorial & social media services.
- Development and support in the development, implementation and operation of digital projects.
- Technical implementation and realisation of customer concepts and projects.
- Test and deployment of the created projects.
- Creation of user and developer documentation.
- Maintenance of the created and existing projects (agreement in an optional and separate service and support contract).
- Other services and project tasks can be undertaken by IBM iX. They are agreed individually with the Client, offered individually by IBM iX and commissioned by the Client.

1.5 The Client may place follow-up orders for services up to an amount of EUR 50,000 (fifty thousand euros) informally in writing, by email or verbally. A contract is concluded upon receipt of the order confirmation from IBM iX by the Client.

1.6 Lead times for specific orders: IBM iX requires an appropriate lead time for the provision of suitable resources. This depends on the specific skill category required and the delivery location. As a rule, this can range from approx. two weeks to approx. eight weeks. IBM iX independently determines the employees and team members deployed for the service.

2. Duties and cooperation

2.1 The provision of services by IBM iX depends on the Client's cooperation with IBM iX and on the Client's fulfilment of the agreed obligations to cooperate.

2.2 Subject to the specific requirements of the project, the agreed confidentiality provisions and at the request of IBM iX, the Client will provide the necessary market, production, sales and company figures in compliance with data protection regulations and will disclose all other data and circumstances relevant to IBM iX's performance.

2.3 Unless deadlines are expressly agreed in the contract as binding (Fixed Deadline), any performance times shall be deemed to be non-binding planning dates.

2.4 Client's cooperation

2.4.1 The Client shall support IBM iX in the fulfilment of its contractual obligations. This includes in particular the timely provision of information, data material, hardware and software, to the extent this is required. The Client must pay particular attention to the provisions of the applicable data protection laws. The Client will brief IBM iX in detail regarding the services to be provided by IBM iX.

2.4.2 The Client's obligation to cooperate in the agile project approach is of essential importance. The Client's cooperation in the implementation of the project is therefore agreed as a main performance obligation. The following essential – not exhaustive – obligations to cooperate need to be ensured and provided by the Client at any time:

- Joint creation of the requirements management (backlog) with IBM iX project management (product owner)
- Participation in requirements engineering workshops
- Participation in backlog refinement meetings
- Regular and timely feedback on the delivered sub-project results (project increments, sprint results)
- Timely provision of project-relevant know-how carriers
- Participation in regular coordination meetings with IBM iX project management (product owner) for joint project controlling
- Depending on project status and requirements, participation in appointments as part of agile project collaboration (e.g.: sprint planning, sprint review, release review)

2.4.3 The Client will provide the required number of its own employees with the necessary specialist skills to execute the contractual relationship. This does not give rise to any claims against IBM iX for the Client's employees; in particular, no employment relationship arises.

2.4.4 If the Client has undertaken to provide IBM iX with materials (images, sound, text, etc.) in connection with the performance of the contract, the Client must make these available to IBM iX immediately and in a standard, directly usable, preferably digital format. IBM iX does not acquire any rights whatsoever to such materials by the Client making them available. IBM iX is only entitled to use such materials provided by the Client for the purpose of fulfilling the Agreement. IBM iX is in no way authorised to use such materials for other purposes and/or to pass them on to third parties.

2.4.5 All acts of cooperation, in particular the provision of employees, shall be carried out at the Client's own expense. In addition, the Client shall provide a responsible, expert contact person, the so-called "Product Owner" (Project Manager), who is authorised to make all decisions related to

the implementation of the project and to take corresponding actions.

2.5 Project execution

2.5.1 The project execution and software development are carried out as part of an agile development process. Individual work packages and their requirements are collected and defined in the so-called product backlog. The work packages are summarised for processing in sprints (usually two-week cycles), sprints in turn in releases (bundling of three – four sprints).

2.5.2 The Client will test the services during the sprints and releases on an ongoing basis. Upon completion of a sprint, or optionally a release, whose completion is indicated by IBM iX, the Client is obliged to test and release the result of the sprint/release without undue delay and to declare acceptance of this part (partial acceptance, *Teilabnahme*). If the sprint/release result is rejected, the Client must notify IBM iX immediately in writing of the reasons for the rejection. Acceptance by the Client can be declared by a written declaration or by implied or conclusive behaviour.

2.5.3 If the agreement is a "contract for work" (*Werkvertrag*), IBM iX will demonstrate to the Client on the agreed date or after completion of the work the fulfilment of the performance characteristics in an acceptance test or a presentation of the work results in accordance with the acceptance criteria specified in the Agreement and by means of test data and test scenarios to be provided by the Client.

2.5.4 The Client shall accept the work services (*Werkleistungen*) immediately after successful completion of an acceptance test – if agreed – and/or after handover. Insignificant deviations from the agreed performance characteristics and acceptance criteria do not entitle the Client to refuse acceptance. IBM iX's obligation to rectify errors in accordance with the provisions of these GTC and/or the Agreement remains unaffected.

2.5.5 The services of IBM iX are deemed to have been provided in accordance with the contract if the Client has approved or accepted the work results in writing following personal presentation or – if agreed when the order was placed – written notification. If there is no response from the Client after written notification of readiness for acceptance by IBM iX, IBM iX will issue a reminder for acceptance, setting a deadline of at least five working days. If this grace period expires without a response from the Client, the services specified in the notification of readiness for acceptance will be deemed to have been accepted.

2.5.6 Conclusive acceptance shall be deemed to have taken place in particular if the software is used as intended (e.g. use in a productive environment, successful "go-live", etc.), use of the work without complaint, sale of the software or unconditional payment of the remuneration.

2.5.7 The Client is responsible for third parties who work in the area of IBM iX's activities under the Agreement at the Client's instigation or with the Client's acquiescence as if they were the Client's vicarious agents (*Erfüllungsgehilfen*). IBM iX is not responsible to the Client if IBM iX is unable to meet its obligations to the Client in whole or in part or in good time due to the conduct of one of the aforementioned third parties. Any liability on the part of IBM iX in this respect is excluded.

2.5.8 IBM iX is permitted to use subcontractors to provide services.

2.6 Hosting

2.6.1 To the extent IBM iX stores content and data for the Client as a technical service provider and provides the Client with the technical infrastructure that allows third parties to retrieve the data from the Internet or otherwise (hosting), the Client undertakes vis-à-vis IBM iX not to upload any content or data that is punishable or otherwise illegal in absolute terms or in relation to individual third parties.

2.6.2 The Client undertakes to indemnify and hold IBM iX harmless from any liability and any costs, including potential and actual costs of legal proceedings, if claims are asserted against IBM iX by third parties because the Client, in culpable breach of its obligations (e.g. in relation to copyright and trademark rights, right to one's own image, general personality rights, etc.), has infringed their rights or otherwise acted unlawfully or allowed this to happen.

2.6.3 The same applies to the violation of competition law standards. IBM iX shall inform the Client of such claims and, insofar as this is legally necessary and/or possible, give the Client the opportunity to defend itself against the asserted claim. In return, the Client shall immediately provide IBM iX with all available information about the facts that are the subject of the claim.

3. Change Request

3.1 If the Client wishes to make a change to the agreed services owed by IBM iX, the Client must address this change request (Change Request/CR) in writing to IBM iX.

3.2 Request for changes shall be, inter alia, a.) new requirements placed by the Client on the scope of performance that have not yet been agreed; or b.) a requirement placed by the Client on the scope of performance that was previously expressly agreed as not being part of the scope of performance; and c.) specifications of requirements on the scope of performance differently than previously agreed.

3.3 IBM iX will examine the effects of the Change Request on the subject matter of the service, in particular with regard to remuneration and deadlines. IBM iX will inform the Client in writing if the Change Request is unreasonable for IBM iX or under what conditions the Change Request can be implemented.

3.4 The Client will decide within a period specified by IBM iX whether to accept the offer to implement the Change Request. As long as no agreement is reached, the previously agreed services remain unchanged.

3.5 In the event that the review of the Change Request impedes compliance with deadlines, IBM iX will inform the Client accordingly. In this case, the Client and IBM iX will adjust the deadlines accordingly. IBM iX will not be in delay if the Client and IBM iX fail to reach agreement on the postponement of these deadlines due to a review of a Change Request.

3.6 If IBM iX and the Client do not agree to change the agreed services on the basis of the Change Request, the Client must reimburse the expenses for the examination of the Change Request, the preparation of a change proposal and any waiting times. The costs of the expenses shall be calculated according to the agreed daily rates.

4. Prices and terms of payment

4.1 Unless otherwise stipulated in the Agreement, services are provided on a time and materials basis (T&M). The services are invoiced monthly in arrears on the basis of the actual time and material costs incurred.

4.2 All orders placed by the Client on the basis of T&M are based on the current IBM iX price list. If the parties agree on a fixed price, this fixed price corresponds to the total remuneration owed for the agreed service ("Project Scope"), unless separate

remuneration has been agreed for individual services. Billing is generally carried out in equal monthly instalments of the total remuneration over the duration of the project.

4.3 Invoice amounts are due upon receipt of the invoice and payment must be made within 30 days of the invoice date to an account specified by IBM iX. All prices are quoted in euros plus the applicable value added tax. The prices quoted are to be understood from the registered office or place of business of IBM iX. In addition, the Client is responsible for any duties, taxes, levies or charges imposed by any authority in connection with the purchase of products or services under the Agreement.

4.4 IBM iX is entitled to adjust the agreed daily rates at the beginning of each calendar year in line with economic changes (Economic Change Adjustment or ECA) as described below. This price adjustment will apply to all prices agreed in the Agreement for the year of the price adjustment and all subsequent years of the agreed contract term. The price adjustment will be made as soon as possible after publication of the price index on which the price adjustment is based. IBM iX will inform the Client of the adjusted prices and will invoice the Client for the agreed services on the basis of the adjusted prices, possibly also retroactively depending on the date of publication of the price index. If this price index is corrected after publication and this correction has not yet been taken into account by IBM iX in the price adjustment, IBM will correct the price adjustment accordingly, including retroactively. The Client and IBM iX agree to use the "Time series DJ7516: Collectively agreed pay rates, production sector (incl. construction), on an hourly basis Germany; base year 2000=100)", which is published by Deutsche Bundesbank in its monthly report, statistical section, to determine the price adjustment. Should this price index no longer exist or be subject to significant change, a comparable index published at least annually from a source accepted by both parties shall be used instead. The above-mentioned price index can be found at the following link: *http://www.bundesbank.de/Navigation/EN/Statistics/Time_ser ies_databases/Macro_economic_time_series/its_details_valu e_node.html?tsId=BBK01.DJ7516&listId=www_v36_2011_ta rifinsstd*

The index value from the current year (Current Index) and the index value used in the year of the last price adjustment (Last Index Used) are used to calculate the price adjustment. If a price adjustment has not yet been made for the Agreement, the index of the last year before the start of the contract (base year index) is used as the Last Index Used.

4.5 The price increase according to clause 4.4 amounts to at least 2.5 % per year.

4.6 Costs for third-party services such as licence fees or similar shall be borne by the Client.

4.7 All fees for services payable under the Agreement are exclusive of travel costs and expenses and other reasonable expenses incurred in connection with the provision of services. These expenses, such as the cost of travel, per diem and accommodation allowances, may be charged additionally. Travel times, with the exception of the time spent commuting from the place of residence to the regular place of work, shall be regarded as working hours and shall be invoiced to the Client in accordance with the applicable rates.

4.8 Waiting times requested by the Client or attributable to the Client are not included in the agreed remuneration. These waiting times shall be charged in accordance with the provision in clause 4.1 of these GTC as additional costs. If

IBM iX incurs additional expenses as a result of these waiting times, these must be reimbursed separately by the Client.

4.9 In the event that IBM iX commissions a third-party service for the Client, such as production orders to third parties, acquisition of third-party rights (e.g. image rights, sound rights, copyrights and personal rights), initially for its own account, the Client owes IBM iX a handling fee of 15 % of the respective order value for support, processing and monitoring. IBM iX is entitled to demand advance payments due immediately in the amount of the gross order value from an anticipated cost expenditure of EUR 10,000 for third-party services.

4.10 The Client may only offset or withhold payments if its counterclaim is undisputed or has been legally established.

5. Termination

5.1 Unless otherwise agreed, both parties are entitled to terminate the Agreement for convenience in writing at any time. Notice of termination shall be given in writing subject to a notice period of ¼ of the project term, but at least two months.

5.2 The Client undertakes to pay for the services provided by IBM iX up to the termination date in accordance with the agreed prices. Additional services provided by IBM iX and services provided by third parties are only to be paid for by the Client if this has already been agreed in the offer or approved by the Client in a corresponding supplementary order. The Client, however, undertakes to indemnify IBM iX from all commitments already incurred and to compensate IBM iX for all damages of any kind resulting from such measures and/or the termination of work.

6. Rights of use and property rights

6.1 Definitions

6.1.1 "Client Software" (Category 1) is all work results that IBM iX has developed or created specifically for the Client as part of a concrete project collaboration under the Agreement.

6.1.2 "IBM iX Assets" (Category 2) are all those modules or technical components (software libraries, frameworks, program modules, program components etc.) and any modifications or enhancements of such works that IBM iX develops and programs and that do not fall under Category 1. "IBM iX Assets" are not created specifically for the Client but are used as a basis to produce individual software ("Client Software").

6.1.3 "Standard Products" (Category 3) are third-party copyrighted materials used by IBM iX for the provision of services, which are the property of the respective manufacturer and are passed on to IBM iX or the Client in the form of licences. The rights to these standard products remain with the manufacturer.

6.1.4 Open Source Software (OSS) (Category 4): OSS is software that is available under various OSS licence terms. OSS is provided by the Client for use by IBM iX.

6.2 Client Software (Category 1)

6.2.1 The Client receives the irrevocable right to use copyrighted works that IBM iX develops as Client Software for the Client under the Agreement. Client Software does not include works of authorship that are provided to the Client under the service description but not specifically created for the Client, nor does it include modifications or enhancements to these works under the service descriptions (i.e. IBM iX Assets). Separate licence agreements apply to some IBM iX Assets. For "Standard

Products", only the respective licence terms of the manufacturer apply.

6.2.2 IBM iX retains the irrevocable, non-exclusive, worldwide, paid-up licence to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Client Software.

6.3 IBM iX Assets (Category 2)

6.3.1 The above granting of rights pursuant to Section 6.2 does not apply to "IBM iX Assets" pursuant to Section 6.1.2 of these GTC. The IBM iX Assets deployed, used and further developed by IBM iX remain the sole property of IBM iX and may therefore also be used by IBM iX for other projects and by other clients. The Client cannot derive any rights whatsoever from the IBM iX Assets. Insofar as IBM iX Assets are contained in the Client Software, the Client receives an irrevocable (subject to the Client's payment obligations), non-exclusive, worldwide licence to use IBM iX Assets internally exclusively in connection with the Client Software. This does not include the right to edit. Any licence fees for the granting of rights in accordance with this provision are covered by the remuneration agreed with the Client for specific projects in the order.

6.3.2 Unless otherwise agreed, IBM iX is not obliged to hand over the readable source code of the IBM iX Assets to the Client. The Client is free to extend the scope of use in a separate agreement or, alternatively, to purchase the source code permanently.

6.3.3 If the permanent transfer of the source code of IBM iX Assets has been agreed in return for remuneration, the provisions of 6.2 and the following restrictions apply:

6.3.4 The right to transfer the rights of use to the IBM iX Assets granted to the Client to a third party requires the prior written consent of IBM iX and separate remuneration. The IBM iX Assets may only be used for the Client's own purposes.

6.3.5 If the Client makes the source code of the IBM iX Assets available to a third party, e.g. a competitor of IBM iX, for further processing on the basis of a separate authorisation, this may only be done for the Client's own corporate purposes. In any case, the Client must obligate this third party in accordance with the provisions of this Agreement.

6.3.6 Consent to the transfer of the rights to use the IBM iX Assets does not include the assignment of claims arising from the contract, in particular claims for warranty and liability. This requires the contractual consent of IBM iX.

6.4 Standard Products (Category 3)

6.4.1 Standard Products used by IBM iX for the provision of services are the property of the respective manufacturers. Standard Products do not include Client Software, IBM iX Assets or OSS. Standard Products are protected by copyright and are licensed by the respective manufacturer in accordance with the manufacturer's current licence terms. Any licence agreements are directly agreed between the Client and the manufacturer.

6.4.2 Documents, concepts or components etc. from third-party manufacturers also remain the property of the third-party manufacturer.

6.4.3 If Standard Products from third-party manufacturers are used, the Client shall observe the separate licence conditions and bear any costs incurred.

6.5 Open Source Software (OSS) (Category 4)

6.5.1 To the extent IBM iX installs, integrates, configures or modifies OSS for the Client in the course of providing its services and adds it to the work results, it is understood that these actions are carried out in the name and on behalf of the Client and that the Client acquires the licences directly from the respective rights holder and that the OSS is not distributed by IBM iX, but is provided by the Client within the meaning of clause 6.1.4 above. The Client must observe the separate OSS licence conditions.

6.6 Other rights

6.6.1 To the extent that IBM iX develops or provides other works of authorship to the Client under the Agreement, the rights shall also be granted in accordance with the provisions of clauses 6.2 to 6.4.

6.6.2 Each party retains the exclusive rights to industrial property rights, copyrights and other know-how which the respective party held at the time of conclusion of the contract or which it acquired or developed independently of the contractual relationship between the Client and IBM iX.

6.6.3 Inventions made jointly by employees of the Client and IBM iX or by employees of the respective affiliated companies during the provision of services belong jointly to both parties, as does the right to register the invention as a property right and the property rights granted to the invention. Each of the parties has the right to use such property rights and to grant licences to third parties or to transfer their rights without notifying or making payments to the other party. Expenses for obtaining and maintaining a joint property right shall be borne equally by the parties. If a party waives registration in a country, the other party may register the property right in that country at its own expense and shall have full control over the registration or maintenance, whereby both parties shall in any case remain owners of the property right.

6.6.4 IBM iX has the right to use the sample solutions, concepts and methods used for the Client (in particular "IBM iX Assets") for other clients, in particular to provide services for other IBM iX clients or to develop new products. The provisions on "Client Software" remain unaffected by the provisions of this clause.

6.6.5 The Client is not authorised to pass on source codes to third parties.

6.6.6 IBM iX is responsible for proper, industry-standard documentation of the Client Software and the current source code of the Client Software in digital form that is understandable and comprehensible to an external expert third party. The documentation shall be compensated with the respective remuneration.

6.6.7 The rights granted to the Client by IBM iX in this clause 6 are subject to payment by the Client of the amounts due as agreed in the Agreement.

6.6.8 IBM iX is not obliged, but entitled, to make its services the subject of applications for industrial property rights.

7. Warranty

7.1 In the case of work services (*Werkleistungen*), IBM iX warrants (*gewährleistet*) that the contractually agreed features are fulfilled and correspond to the scope of services. The warranty period begins with acceptance.

7.2 The warranty period is one year from approval or acceptance of the respective work result, in any case from the time of commissioning by the Client. IBM iX will rectify warranty defects of which it has been informed by the Client in writing. If IBM iX is unable to rectify a defect even after the setting and expiry of a reasonable grace period, the Client may – insofar as the value or suitability of the work result is restricted – demand a reduction in the price or rescission of the contract at its

discretion. In the case of insignificant errors or deviations, however, withdrawal from the Agreement is excluded.

7.3 If the Client discovers defects after acceptance that were present but not obvious at the time of acceptance, the Client must notify IBM iX of these immediately, but at the latest within two weeks after discovery. The notification of defects must be submitted in writing and must include a qualified description of the defect that enables IBM iX to trace the reported defect. If the notification is not made in a timely and proper manner, the work results are deemed to be approved with regard to this defect. The assertion of warranty claims is excluded in this respect.

7.4 IBM iX will rectify at its own expense any defects that are properly reported before expiry of the warranty period. If an inspection reveals that there is no defect, IBM iX may demand that the time spent be remunerated in accordance with the agreed daily rates, provided that the Client could have recognised that there was no defect in IBM iX's performance if it had exercised reasonable care.

7.5 Where possible and reasonable for the Client in view of the effects of the defect, IBM iX is entitled to provide an interim solution to circumvent the defect until it has been finally rectified.

7.6 The warranty obligation shall not apply if the Client modifies the received work results itself or has them modified by third parties, unless the Client proves that the defect or malfunction is not attributable to the modifications made by it or by third parties.

7.7 If significant defects are not rectified by IBM iX within a reasonable period from receipt of the proper notification of defects, but are remedied by a reasonable interim solution, the Client is obliged to set IBM iX a further reasonable grace period. Circumstances within the Client's sphere that prevent, hinder or delay the rectification of defects will be borne by the Client.

7.8 There is no warranty claim for services (*Dienstleistungen*), i.e. those that are not work services (*Werkleistungen*).

7.9 Without prejudice to the Client's warranty rights, it is pointed out that it is not possible to exclude errors in programs and information technology materials under all conditions of use in accordance with the state of the art. IBM iX therefore neither warrants the uninterrupted nor error-free use of a program or service.

7.10 IBM iX is not obliged to check the legal admissibility of the service items (e.g. competition and trademark law). IBM iX is also not obliged to check the accuracy of any factual statements about the Client's products and services contained in the service items that have been provided or approved by the Client.

8. Liability

8.1 IBM iX's entire liability for damages due to simple negligence is limited to the greater of EUR 300,000 (three hundred thousand euros) or the amount paid by the Client for IBM iX's services under the Agreement (in the case of recurring services, in the twelve months prior to the last event giving rise to liability). This also includes compensation for futile expenses. IBM iX is not liable for any indirect or consequential damages in case of simple negligence, in particular not for lost profits, lost revenue or lost savings.

8.2 The following amounts are not subject to the above caps: i) third-party payments referred to in the paragraph below, ii) damages for bodily injury (including death), iii) loss or damage caused by breach of a guarantee assumed by IBM iX in connection with a transaction under the Agreement, and iv) damages caused intentionally or by gross negligence.

8.3 If a third party asserts claims against the Client that an IBM iX Client Software acquired under the Agreement (including the IBM iX Assets contained therein) infringes a patent or copyright, IBM iX will defend the Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM iX, provided that the Client (i) promptly notifies IBM iX in writing of such claim, (ii) provides the information requested by IBM iX, and (iii) leaves all defences and settlement negotiations to IBM iX and agrees to provide reasonable cooperation, including efforts to mitigate damages.

8.4 IBM iX accepts no liability for claims that are due in whole or in part to products of other providers or products or services that were not provided by IBM iX; or for claims that are based on infringements of rights or infringements of the rights of third parties that were caused by content, materials, designs, specifications or the use of non-current versions or releases of IBM iX Client Software, including the IBM iX Assets contained therein, and that could have been avoided by using the current release or version. Furthermore, IBM iX accepts no liability for defects that are based in whole or in part on performance actions by the Client or that originate from the Client's sphere.

8.5 IBM iX is not liable for incorrect or erroneous documents provided to IBM iX by the Client. The Client is liable to IBM iX for all documents made available to IBM iX (materials, data, interfaces, etc.) and must also compensate IBM iX for any resulting damages and expenses.

9. Non-solicitation clause

9.1 During the term of the Agreement and for a period of six months after termination or expiration, the Client undertakes not to entice away any employees and not to establish a direct contractual relationship with them without the prior written consent of IBM iX.

10. Data protection

10.1 To the extent that IBM iX processes personal data on behalf of the Client under the Agreement, the Data Processing Addendum of IBM at *http://ibm.com/dpa* DPA) and the respective DPA Exhibit shall apply, unless the parties have concluded a separate agreement on order processing in accordance with the requirements of Art. 28 GDPR.

10.2 For data processing for IBM iX's own purposes, IBM iX and its affiliates (i.e. International Business Machines Corporation based in Armonk, USA and its affiliated group companies) and the respective contractors and sub-processors may store the business-related contact information of the Client, its employees and authorised users (for example name, business address and telephone, email and user IDs) within the scope of the business relationship between IBM iX and the Client in all countries and process it for the purpose of handling the contractual relationship and maintaining the business relationship. When the Client provides information to IBM iX and notice to, or consent by, the individuals is required for such processing, the Client will notify individuals and obtain consent. Further information on business-related contact information can be found in the IBM privacy policy at

https://www.ibm.com/privacy/ and our privacy policy at *https://ibmix.de/en/privacy/.*

11. Miscellaneous

11.1 Amendments and additions to this contract must be made in writing to be effective. The same applies to the waiver of the written form requirement. The written form in the aforementioned sense requires at least a scan of the signature of a party representative in a PDF document (or equivalent file formats).

11.2 Should any provision of these GTC be or become invalid or unenforceable, the remaining provisions shall remain valid. This shall not affect the validity of the Agreement as a whole. The invalid provision shall be replaced by a provision that comes as close as possible to the intention of the parties within the scope of what is legally possible. The same applies to loopholes.

11.3 The exchange of confidential information shall take place exclusively within the framework of a separately signed confidentiality agreement. To the extent that confidential information is exchanged in connection with the Agreement, the confidentiality agreement concluded between the parties in this respect shall become an integral part of this Agreement and shall be subject to its provisions.

11.4 Unless otherwise stipulated in this GTC, claims arising from this Agreement are subject to a two-year limitation period. Excluded from this are claims for which a longer period is prescribed by law.

11.5 IBM iX may use the Client as a reference for marketing purposes after consultation with and approval by the Client. This includes, for example, naming the Client as a "new customer", creating "success stories", naming the Client on the IBM iX website or providing selected reference information. IBM iX may also, in consultation with the Client, publicly reproduce or refer to the services provided for demonstration purposes, unless the Client can assert a conflicting legitimate interest.

11.6 Any disputes or complaints shall initially be resolved by the parties in a spirit of partnership. In particular, before taking legal action for non-fulfilment of a contractual obligation, each party shall enable the other to fulfil it in a reasonable manner.

11.7 The place of jurisdiction is the registered office of IBM iX. The contracts and the relationships between the parties are subject to the laws of the country in which IBM iX has its registered office. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

11.8 In the event of force majeure, the parties shall be released from their obligations, unless monetary debts are involved.

11.9 The parties are responsible for compliance with all applicable export and import laws and related embargo and economic sanctions regulations, including those of the United States of America, that prohibit or restrict the export, re-export or transfer of products, technology, services or data, directly or indirectly, to certain countries or for certain end uses or end users. The Client acknowledges that IBM may deploy global resources (temporary on-site personnel as well as personnel in locations worldwide). The Client will not provide IBM iX or its affiliates with content that is subject to export controls or requires export licences. Notwithstanding anything to the contrary in this Agreement, neither party is obligated to take any action that violates or is punishable by applicable law.

11.10 The assignment of rights arising from the Agreement requires the prior written consent of the other party. IBM iX is entitled to assign payment claims. IBM iX remains responsible for the fulfilment of its obligations. The assignment of rights by IBM iX in connection with the sale of the part of IBM iX's business that includes a product from IBM iX or another provider does not require consent. IBM iX may disclose an agreement and related documents in connection with an assignment.

Status: November 2024