**DNS: Software (III.) “VZ: 009-2022”**

Contract on the provision of SW/license/access to update/technical support   
pursuant to Section 1746 Article 2 in conjunction with Section 2358 et seq. of Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as “C.C.”)

This contract is concluded within the framework of the established dynamic purchasing system (DNS) stated in the title above.

Client’s contract ref. No.: P22V00000230

Supplier’s contract ref. No.: [TO BE FILLED IN BY THE SUPPLIER[[1]](#footnote-1)]

1. **Contracting parties**
   1. **Client: The University of West Bohemia**

address: Univerzitní 2732/8, 301 00 Plzeň

represented by: doc. Dr. RNDr. Miroslav Holeček, Rector

Organization ID No.: 49777513 Tax ID: CZ49777513

(hereinafter also referred to only as “UWB”)

The persons authorized to act on behalf of the Client pertaining to technical matters are listed in Annex 2 to this contract (hereinafter referred to as “Client’s Contact Person”)

**and**

* 1. **Supplier:** [TO BE FILLED IN BY THE SUPPLIER]

address: [TO BE FILLED IN BY THE SUPPLIER]

represented by: [TO BE FILLED IN BY THE SUPPLIER]

Company ID No.: [TO BE FILLED IN BY THE SUPPLIER] Tax ID: [TO BE FILLED IN BY THE SUPPLIER]

registered in the Commercial Register [TO BE FILLED IN BY THE SUPPLIER], section [TO BE FILLED IN BY THE SUPPLIER], file [TO BE FILLED IN BY THE SUPPLIER]

The person authorized to act on the Supplier’s behalf in all matters technical:

[TO BE FILLED IN BY THE SUPPLIER], e-mail [TO BE FILLED IN BY THE SUPPLIER], tel.: [TO BE FILLED IN BY THE SUPPLIER] (hereinafter referred to as “Supplier’s Contact Person”)

1. **Subject matter**
   1. The subject matter of performance of this contract is itemized in Annex 2 (Specification of Deliverables) and possibly in other annexes to this Contract.
   2. Total price for the subject of performance: CZK TO BE FILLED IN BY THE SUPPLIER excl. VAT.
   3. Other trade and payment terms (hereinafter referred to as “Terms and Conditions”) are listed in Annex 1, which forms an integral part of this Contract. The supplier declares that they have acquainted themselves with these Terms and Conditions.
   4. In the event that any contractual provision is unclear, indeterminate or inconsistent with the other provisions, the order of documents in terms of the priority for interpretation is as follows: Contract, Annex 2 (and possibly other annexes added by the Client, particularly those that specify in more detail the subject matter of performance), Annex 1 (Terms and Conditions), Annex 3 (License Agreement).
   5. This Contract is signed electronically by both contracting parties using the recognized electronic signature.
2. **Annexes:**

Annex 1 – Terms and Conditions

Annex 2 – Specification of Deliverables, Time and Place of Performance, Client’s Contact Persons

Annex 3 – License Agreement

|  |  |
| --- | --- |
| Date (see the electronic signature)  On behalf of the Client:  -----------------------------------------------  **The University of West Bohemia**  doc. Dr. RNDr. Miroslav Holeček  Rector  *signed electronically* | Date (see the electronic signature)  On behalf of the Supplier:  ---------------------------------------------------  [**TO BE FILLED IN BY THE SUPPLIER**]  [TO BE FILLED IN BY THE SUPPLIER]  *signed electronically* |

**Annex 1 – Terms and Conditions**

1. **Subject matter of performance**
   1. The Supplier undertakes to supply/provide the Client with the deliverables and all other activities listed in the Contract and its Annexes, and the Client undertakes to pay the agreed price for the proper delivery of the subject of the performance/activities provided.
   2. A detailed specification of the deliverables and the time and place of the performance are stated in Annex 2 to the Contract and possibly in other annexes, particularly those that specify in further detail the subject matter of performance.
   3. If the deliverable is the provision of software (hereinafter referred to as “SW”), the Supplier expressly declares that the SW is fully functional, complete and ready to be used by the Client for the period and purpose stated in Annex 2 to the Contract (or for the usual purpose).
   4. If the deliverable is the provision of SW or the extension of the SW license, the Supplier expressly declares that based on their legal relationship with the author/holder of the ownership rights they are authorized to provide or mediate the provision or the extension of the license for the purpose stated in Annex 2 to the Contract. The Supplier further declares that the performance of the Contract shall not result in the rights of any third person or any legal regulation being breached. The Supplier is fully responsible for the veracity of these declarations. The Supplier undertakes to compensate the Client for any damages incurred as a result of the declarations in this article being untruthful.
   5. Other conditions for the provision of the SW license or the license agreement are stated in Annex 3 to the Contract (hereinafter referred to as “License Agreement”). Any aspects of the license agreement that are inconsistent with or contradict the Contract and the purpose as per Article 1.3, or if due to their content or nature do not correspond to the usual license conditions of a similar deliverable or obviously disadvantage the Client, shall be deemed legally ineffective. Such legally ineffective provisions among other things include provisions mandating the Client’s obligation of performance (financial or otherwise), an inflationary or currency clause, agreement expanding the possibilities of terminating the Contract, any financial or other types of compensation following the termination of this Contract, provisions regarding acts of Providence, etc.
   6. If the License Agreement is made out in multiple language versions, the Czech version always has priority in its interpretation.
   7. In the event of the provision of service, technical or another type of support (hereinafter referred to as “Maintenance”), these activities shall be performed by the Supplier in the extent as follows:
2. The provision of technical support – any update included in the SW version with new or improved functionality or features;
3. The provision of a support phone line – telephone consultations regarding the deliverables available in Czech or English on weekdays between 9:00 a.m. and 4:00 p.m.
   1. If Annex 2 to the Contract defines the content and extent of Maintenance differently from Article 1.7, this content and extent of Maintenance shall apply.
   2. The Client is not obligated to accept the deliverable if such deliverable shows any defect (with the absence of or a fault in the documentation necessary for the operation of the deliverable being considered a defect).
4. **The time period, place and manner of performance**
   1. The Supplier is obligated to deliver/provide the Client with the deliverable (or an independent part thereof) within the time period stated in Annex 2 to the Contract. The delivery time starts at the time of delivery of the Client’s formal request for the performance of the Contract.
   2. Along with the deliverable, the Supplier shall provide the Client with appropriate documentation and instruction manuals in Czech or English if these are necessary for the operation of the deliverable.
   3. In the case of the delivery of SW, the acceptance of this deliverable (or an independent part thereof) shall be confirmed by the Client’s Contact Person signing the delivery note (or the handover protocol) stating the date when the deliverable was handed over.
   4. The Client is not obligated to accept partial performance of the Contract (i.e., an incomplete independent part of the deliverable). The Supplier’s right to bill the Client arises only upon the delivery of a complete independent part of the deliverable.
   5. The place of performance includes buildings used by the Client the precise specification of the location of the performance of particular items of which is stated in Annex 2 to the Contract.
   6. The contact persons of both contracting parties are not authorized to alter the Contract, unless expressly stated otherwise in this Annex for the particular case. Any changes with respect to the Contact Persons must be communicated to the other contracting party in writing, with the change taking effect only upon the delivery of such notification to the other party.
5. **Payment terms**
   1. The agreed price of the deliverable is the highest possible price and includes any and all fees and other costs associated with the delivery/provision of the deliverable.
   2. VAT shall be charged by the Supplier in compliance with the legal regulations effective as of the date of taxable supply, i.e., the date on which the deliverable (or an independent part thereof) was handed over.
   3. The price for the deliverable (or an independent part thereof) shall be paid by the Client in Czech currency based on a tax document (hereinafter referred to as “invoice”) issued by the Supplier and delivered to the Client.
   4. The Supplier has the right to issue an invoice for the delivery of SW upon its delivery (i.e., following the provision of all SW in the extent and with the number of licenses forming an independent part). An invoice for such performance which is to be provided on a continual basis (particularly Maintenance) may only be issued by the Supplier following the start of the provision of such deliverable.
   5. The invoice must contain all the required details stated in the Contract and its annexes and all the necessary information required of an accounting and tax document pursuant to the relevant legislation, particularly Act No. 563/1991 Coll., *on Accounting*, and Act No. 235/2004 Coll., *on Value Added Tax* (hereinafter referred to as “VAT Act”).
   6. In the case of the provision of SW, the invoice shall be accompanied by an attachment containing a copy of the delivery note (or handover protocol) proving the handover and acceptance of the deliverable (or an independent part thereof), signed by the respective Client’s Contact Person.
   7. The invoice must contain the Client’s Contract reference number.
   8. The invoice must contain the name of the bank and the Supplier’s Czech bank account number as per the VAT Register (pursuant to Section 96 of VAT Act).
   9. **If the deliverable (or an independent part thereof) is financed from project resources (i.e., such information is stated in Annex 2 to the Contract), the invoice must contain the identification information of the project in the extent to which it is stated in Annex 2 to the Contract (i.e., usually the title and number of the project).**
   10. The due date of the invoice shall be 30 days following its delivery to the Client.
   11. In the event that the invoice does not contain all the necessary information, the Client has the right to return it to the Supplier before its due date without violating the payment terms (late payment of the invoice). The new due date is determined based on the date of delivery of the completed or corrected invoice to the Client.
   12. The Client does not provide any advance payments.
6. **The discretions and duties of the contracting parties**
   1. The Client has the right to set off any due and not yet due claim arising from the Contract against any due or not yet due claim toward the Supplier.
   2. The Supplier does not have the right to set off, place mortgage liens on or transfer to another entity any of their discretions or duties (particularly claims toward the Client) arising from the Contract without the prior written consent of the Client.
   3. The Supplier is responsible for any damage, including non-material damage, caused by a breach of any obligation arising from the Contract or any obligation set by a legal regulation.
   4. The Supplier acknowledges that as an obliged person pursuant to Section 2e) of Act No. 320/2001 Coll., *on Financial Control in Public Administration and on the Amendment to Some Acts (Act on Financial Control)*, they are obligated to cooperate in the event of a financial audit.
   5. The Supplier acknowledges that the Client is an entity obligated to make its contracts public pursuant to Act No. 340/2015 Coll., *on the Specific Conditions for the Effectiveness of Certain Contracts, the Publication of Such Contracts and the Register of Contracts*, and if the Contract meets the conditions for its publication, the Client shall publish the Contract in the Register of Contracts. The decisive criterion mandating the publishing of the Contract in the Register of Contracts is that the price for the performance exceeds CZK 50,000 excl. VAT.
   6. The Supplier further acknowledges and agrees that the Contract may be published on the Client’s profile pursuant to Section 219 of *Act No. 134/2016 Coll., on Public Procurement*, incl. publication of the actual price paid for the performance of the Contract.
7. **Contractual penalties**
   1. In the event the Supplier is in delay in providing the deliverable according to the conditions set out in the Contract (or those stated in Annex 2 to the Contract), the Supplier must pay a contractual fine equal to 0.5% of the total price (excl. VAT) for each commenced day of delay.
   2. In the case of other activities and obligations of the Supplier set out in the Contract (or in Annex 2 to the Contract) for which there is no specific deadline, i.e., particularly the provision of Maintenance, not delivering such within the time period specified in the Client’s written call for action shall constitute a delay by the Supplier in their performance. Should the written call for action fail to mention a deadline, the time period for delivering the required action shall be three (3) days. In the event of a delay according to the first clause, the Supplier is obligated to pay a contractual fine equal to 0.5% of the total price (excl. VAT) for each commenced day of delay.
   3. In the event of a delay in either contracting party’s financial obligation, the contracting parties have agreed to charge interest on late payment equal to 0.05% of the outstanding debt for each commenced day of delay.
   4. The contractual penalties are payable one day after the claim arises.
   5. The provision on the contractual penalty does not affect the rightful party’s right to compensation for damages in full. The Contracting parties have expressly agreed to also compensate for non-material damages caused by a breach of Contract.
8. **Withdrawal from Contract**
   1. The Contracting parties have agreed that the Client has the right, pursuant to Section 2001 of the Civil Code, to withdraw from the Contract in the event of its breach by the Supplier.
   2. The Client is further entitled to withdraw from the Contract if:
   3. the Supplier announces to the Client that they cannot meet their obligations arising from the Contract;
   4. the court having subject-matter and territorial jurisdiction rules that the Supplier is in bankruptcy or faces imminent bankruptcy (i.e., issues a ruling concerning the Supplier’s bankruptcy or imminent bankruptcy), or if a bankruptcy proceeding is declared or its reorganization permitted;
   5. a motion is made on the dissolution of the Supplier pursuant to Act No. 90/2012 Coll., *on Commercial Companies and Cooperatives* or the liquidation of the Supplier is initiated in accordance with the appropriate laws and regulations;
   6. the Supplier submitted false information or documents in the DNS that do not correspond to reality and had or could have had an impact on choosing that Supplier.
   7. The Supplier has the right to withdraw from the Contract in the event of a delay by the Client in paying the price for the deliverable exceeding 60 days.
9. **Joint and Final Provisions**
   1. The Contract is concluded on the day of its signing by the last contracting party and becomes effective on the day it is concluded. If the Contract is subject to publication in the Register of Contracts pursuant to Act No. 340/2015 Coll., it shall become effective on the day it is published in the Register of Contracts.
   2. In the event that there is an obligation to publish the Contract in the Register of Contracts, such act shall be arranged by the Client. Should the Contract not be published by the Client pursuant to Section 5 of Act No. 340/2015 Coll. within one month of its conclusion, the Supplier is obliged to publish the Contract pursuant to Section 5 of Act No. 340/2015 Coll. within 3 months of its conclusion.
   3. Any alterations or additions to the Contract can only be made based on a written agreement by the contracting parties. Such agreements must take the form of dated and numbered annexes to the Contract, signed by both parties.
   4. The Client declares and the Supplier acknowledges that in the contractual relationship following from the Contract the Client is not a business enterprise.
   5. The contracting parties have expressly agreed that the Contract as well as the discretions and duties arising from it or associated with it are governed by Czech law. The contracting parties expressly rule out the application of the United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna (published in the Collection of Laws of the Czech Republic as Act No. 160/1991 Coll.).
   6. The contracting parties have agreed that any disputes arising from the Contract shall be resolved exclusively by a Czech court with subject-matter and territorial jurisdiction, with territorial jurisdiction being determined by the seat of the Client (Pilsen).
   7. In the event of circumstances on either party’s end jeopardizing the due performance of the Contract, the respective party is obligated to notify the other contracting party without undue delay and initiate a meeting of the representatives of both contracting parties.

1. The Supplier **may** state their contract ref. No. [↑](#footnote-ref-1)