

General Conditions for Leasing

IBM Belgium Financial Services Company SRL/BV

General Conditions for Leasing reference No.: General Conditions for Leasing dated 25 May 2018.

These General Conditions are made between IBM Belgium Financial Services Company SRL/BV ("Lessor") and the Entity who signs the Schedule (the "Lessee").

Lessor may from time to time enter into Leasing with Lessee. Such Leasing shall be on and subject to the terms and conditions of the applicable Schedule incorporating these General Conditions.

1. Definitions

"Agreement" means, with respect to a Schedule, the Schedule executed by the Parties as such Schedule incorporates the terms of these General Conditions, as each may be amended, modified or supplemented from time to time in writing, and the COA if required;

"Alteration" means any change to Equipment, including, without limitation, features and conversions installed on a Equipment after the Commencement Date;

"Amount Funded" means the amount, if specified by Lessor, as the "Amount Funded in the Schedule as may be amended by the COA;

"Assignment" means the assignment of any rights and/or obligations under this Agreement from one Entity to another;

"Average Rent" means, as with respect to any Term, the average amount of Rent, calculated on a per-month basis, payable to Lessor with respect to such Equipment during the immediately preceding Term;

"Business Day" means any calendar day, except a Saturday, Sunday or any other calendar day on which banks are authorized or required by law to close in the country where Lessor is located;

"Certificate of Acceptance" or "COA" means a certificate in a form acceptable to Lessor, and signed by Lessee, denoting the delivery of the Products to the Lessee and authorizing Lessor to pay the Supplier;

"Commencement Date" means the date a Transaction commences in accordance with Section 5.2;

"Conditions Precedent" means, with respect to the effectiveness of a Transaction, all statements, certificates, documents, instruments, and additional terms and conditions required by Lessor under this Agreement to be provided or satisfied on or prior to the Commencement Date.

"Default" means an Event of Default or any event that upon notice or lapse of time or both would constitute an Event of Default under this Agreement;

"End of Leasing Purchase Option" means an option for Lessee into a Leasing to purchase an item of Equipment at the end of the Term at a purchase price which shall be equal to either:

- a. the amount or the percentage of the Amount Funded specified by Lessor, or
- b. the Fair Market Value of such Equipment;

"End of Term Notice" means the notice delivered by Lessee to Lessor in writing, or as otherwise agreed to by the Parties, specifying the end of Term option selected by Lessee;

"Enterprise" means any Entity and the subsidiaries it owns by more than fifty percent (50%). The term "Enterprise" applies only to the portion of the Enterprise located in the country where Lessor is located;

"Entity" means any limited liability company, association, firm, corporation, partnership, trust, or joint venture,;

"Equipment" means a hardware device, its features, conversions, upgrades, elements, or accessories, or any combination thereof or any other item of equipment, that is specified in the Schedule

"Event of Default" means any of the events specified in Section 18 as an Event of Default;

"Expiry Date" means the date that the Term of the Transaction expires, terminates, or is cancelled;

"Fair Market Value" or "FMV" means, with respect to an item of Equipment, the fair market value at a certain moment of such Equipment as determined by Lessor to be the amount that would be realized for the same equipment qualified for manufacturer's maintenance in an arm's length sale between a willing buyer and a willing seller, under no compulsion by either party to perform the sale;

"General Conditions" means these General Conditions for Leasing reference No.: General Financing Terms and Conditions dated 1 October 2009 as it may be modified or amended from time to time in writing;

“**Guarantor**” means an Entity providing a guarantee of Lessee’s obligations arising under any Agreement;

“**IBM**” is a member company of the Enterprise of International Business Machines Corporation;

“**Initial Payment Term**” means the term consisting of the number of consecutive Payment Periods specified on the Schedule beginning with the initial Payment Period;

“**Initial Term**” means the term of the Agreement commencing on the Commencement Date and expiring at the end of the Initial Payment Term;

“**Leasing**” means the operation of financing as described under the Royal Decret n°55 of 10 November 1967 with respect to a Product defined on the Schedule

“**Licensors**” means the Entity who issues the Program License to the Lessee;

“**Part**” means any original component or element of the Equipment or any replacement to such original component or element provided under warranty or maintenance service or in connection with an Alteration;

“**Party**” means either Lessee or Lessor;

“**Payment(s)**” means the amount(s) payable as Rent, together with any other amounts payable under this Agreement;

“**Payment Period**” means the period specified in a Schedule as the “Payment Period” and is the period (e.g. Month, Quarter) for which Rent is due and payable;

“**Planned Commencement Month**” means the month indicated on the Schedule as the “Planned Commencement Month”;

“**Product**” means Equipment and Program Licenses;

“**Program(s)**” means licensed materials under a Program License;

“**Program License**” means a license of a Program between Licensor and Lessee that is specified as a separate item on the Schedule;

“**Renewal Rent**” means the Rent payable during the Renewal Term of a Transaction;

“**Renewal Term**” means the term of a Transaction, agreed to in writing by the Parties, which commences on the day following the Expiry Date of the preceding Term and expires at the end of the last Payment Period in the Renewal Term;

“**Rent**” means the amount due and payable each Payment Period for the Agreement; Rent for the Initial Term is the amount specified in the Schedule as “Rent” or is otherwise included in the “Total Periodic Payment”;

“**Schedule**” means the document that contains details of a Transaction and incorporates the terms of these General Conditions by reference;

“**Supplier**” means the entity supplying Product(s) under a Supply Agreement;

“**Supply Agreement**” means the agreement between Supplier and Lessee for the acquisition of Product;

“**Term**” means, with respect to a Transaction, the Initial Term, any Renewal Term, or the term of any automatic extension under Section 15.1, as applicable; and

“**Transaction**” means the operation of Leasing indicated in the Schedule between Lessor and Lessee;

“**Validity Date**” is the date specified by Lessor in a Schedule as the “Validity Date”.

2. Agreement Structure

2.1 These General Conditions, the Schedule, any COA and any applicable attachments (amendment or addendum) are the complete and exclusive agreement (“the Agreement”) between the Parties regarding a Transaction, and replace and prevail upon any prior oral or written communications between the Parties relating to such Transaction. Each Transaction is effective when the Schedule containing such Transaction is executed by the Parties thereto.

2.2 If there is a conflict of terms among the documents, the order of precedence will be as follows (from highest to lowest priority):

- a. COA
- b. attachments to the Schedule;
- c. the Schedule;
- d. attachments to these General Conditions; and
- e. these General Conditions.

- 2.3 Lessee may, upon consent of Lessor, enter into Schedules which incorporate these General Conditions. Each Schedule shall form a separate Agreement.
- 2.4 Lessor may, with a least three months prior written notice to Lessee, change these General Conditions without changing the conditions of the Schedule. Such changes will apply only to the Agreement after the effective date specified in the notice. No other change to this Agreement will be binding on the Parties unless agreed to in writing by Lessor and Lessee.
- 2.5 This Agreement becomes effective upon signature by Lessor and Lessee of the Schedule.
- 2.6 Lessee agrees that any Transaction initiated under this Agreement shall be binding upon Lessee's successor and permitted assigns.

3. Payment and Taxes

- 3.1 The initial Payment Period for each Transaction shall begin on the first day of the month following the Commencement Date. Lessee agrees to pay Rent on the due dates and in the amounts specified in the Schedule, and to pay such other Payments as they may become due and payable as specified in the Schedule or hereunder. Lessee will pay as instructed by Lessor in the Schedule or on the invoice. If any Payment is due on a non-Business Day, then such Payment shall become due and payable on the next Business Day.
- 3.2 For any Payment not paid in full by its due date, Lessee also agrees to pay a fee in an amount equal to one percent (1%) per month of the unpaid Payment or any part thereof that remains unpaid ("Unpaid Amount") from the due date until the actual date such Unpaid Amount is paid in full, subject to maximum limitations by applicable law (the "Late Payment Fee").
- 3.3 Upon the Commencement Date, Lessee agrees that Lessee's obligations under the Agreement become irrevocable independent of acceptance of the Product, and Lessee's obligation to make all Payments when due, in full, becomes absolute and unconditional, without set off, counterclaim, withholding, deduction, or defense of any kind, and irrespective of errors or deficiencies in or the performance or the quality of the Products, or the performance by the Supplier or any other third party under any other agreement with Lessee. It is further expressly agreed, varying article 1724 of the Civil Code that the Lessee may not demand any discount whatsoever on the Rent, even if a Product has been out of operation for more than forty (40) days.
- If the Agreement is terminated by reason of a judicial decision consequent upon the cancellation of the Supplier Agreement mentioned in the Schedule, the Lessee shall be liable for cancellation compensation calculated in accordance with the provisions of Section 19.1 "Remedies" (a and e).
- 3.4 Payments received by Lessor will be applied in the following order: first to Late Payment Fees, second to overdue Rent, and third to other Payments.
- 3.5 If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on Lessor's net income, then Lessee agrees to pay that amount as specified in an invoice, unless Lessee supplies exemption documentation.

4. Supplier

4.1 Rights and Obligations

For each Product under this Agreement, Lessee represents that under the Supplier Agreement it has the right to assign to Lessor and hereby assigns to Lessor, effective upon signing the Schedule but subject to the occurrence of the Commencement Date, its right to purchase from and its obligation to pay its Supplier the purchase price of the Product up to the amount agreed by Lessor to be funded. All other obligations as defined in the Supply Agreement between Lessee and Supplier governing the acquisition of the Products shall remain with Lessee. As between Lessor and Lessee, the rights and obligations of Lessee in relation to the Transaction are set out exclusively in this Agreement. Nothing in this Agreement shall affect any remedies Lessee may have against the Supplier or the manufacturer of the Product that result from any statutory or contractual warranties arising from said Supplier Agreement. Lessee shall make any claim solely against the Supplier, the Equipment manufacturer, Licensor or other third party if the Product is unsatisfactory for any reason and Lessee will inform Lessor of any legal proceedings beforehand. The Parties agree that during the Term of the Agreement, so long as Lessee is not in default, Lessee shall have the non-exclusive benefit of any applicable warranties of such Equipment made available to Lessor under the Supply Agreement and that Lessee is authorized to act on Lessor's behalf concerning any warranty service for the Equipment during the term of the Agreement, to the extent permitted under the Supply Agreement or if otherwise agreed with the Supplier. The aforementioned authority shall not detract from Lessor's rights over the Equipment.

5. Commencement

- 5.1 The Agreement is effective upon the execution of the Schedule by both Parties. The Agreement will commence provided that:
- the Lessee executed Schedule is received by Lessor by the Validity Date and accepted by Lessor;
 - the Commencement Date occurs by the end of the "Planned Commencement Month" indicated on the Schedule; and
 - no Default is continuing on such Commencement Date and Lessee has satisfied all the Conditions Precedent hereunder and in the Schedule.
- 5.2 Provided that the conditions in Section 5.1 above have been satisfied, the Commencement Date for the Transaction will occur as follows:
- for Products supplied directly by IBM, the shipment date of such Product, unless Lessee notifies Lessor in writing of its rejection of the Transaction for the Product within ten (10) days of such shipment date; and
 - for any other Products, the date specified on a duly executed Certificate of Acceptance, provided that such Certificate of Acceptance is returned to Lessor within ten (10) days after the date specified on the COA as the acceptance date.

If any of the foregoing conditions are not satisfied, Lessor shall have no obligation nor liability with respect to such proposed Transaction. However, Lessor, in its sole discretion, may commence the Agreement or offer a new Transaction to Lessee.

6. Ownership

- 6.1 For each Equipment under the Agreement, Lessor is the owner of the Equipment and Lessee shall have no right of ownership, title or interest therein except as specified in this Agreement. Except for any purchase from Lessor during or at the end of the Term of the Agreement, if, for any reason Lessee does acquire title to the Equipment including any Parts thereof, then Lessee shall be deemed to have transferred such title to Lessor immediately and will, at its own cost and expense, use all reasonable endeavors to do such further acts and execute such documents as may be necessary to give effect to such transfer. Lessee agrees to take such further actions as may be required to protect Lessor's ownership against claims arising directly or indirectly from Lessee's possession or use of the Equipment. The Products are and shall at all times remain chattels; they may not become real property by use, even if they are or will be fixed to real property. If the Products are installed in premises that do not belong to Lessee, the Lessee undertakes to notify the owner of the premises of the Lessor's title to such Equipment by registered letter before installation, and also to promptly send to Lessor a copy of such notification.

6.2 Disclaimer of Warranties

Given the object of the Agreement and Lessor's business, namely that of a financial institution, Lessor may not be regarded as a professional vendor of the Products.

It is agreed that Lessor will hire the Products as is. There is no warranty of any kind. Varying article 1721 of the Civil Code, Lessor may not be held liable for latent defects or faults in the Products. Lessee expressly waives any indemnification or right of termination against Lessor pertaining to this.

7. Quiet Enjoyment

- 7.1 During the Term of the Agreement, Lessor covenants to Lessee that Lessor will not interfere with Lessee's quiet enjoyment of the Equipment so long as no Event of Default by Lessee or anyone acting or claiming through Lessee shall have occurred.

8. Liens and Charges

- 8.1 For each Equipment under Agreement, Lessee hereby agrees to ensure that the Equipment shall at all times be kept free from any lien, charge or encumbrance of any kind, except those created by or through Lessor.

9. Inspection and Marking

- 9.1 Lessee shall permit Lessor, upon prior notice, to inspect any Equipments, Parts, and maintenance records during Lessee's normal business hours and subject to Lessee's normal security procedures. Upon Lessor's request or if Lessee is not the owner of the location where the Equipments are installed, then Lessee will, immediately, affix identifying labels, plates or tags to the Equipment or Part(s) identifying Lessor as the owner of the such item(s).

10. Maintenance and Use

- 10.1 Lessee shall keep each item of Equipment in good condition and working order, ordinary wear and tear excepted, and shall operate it safely in a proper environment as defined by the manufacturer and/or Supplier. Products will be used uniquely by Lessee for its business purposes. As it relates to any software, embedded or otherwise in the Equipment, Lessee agrees to comply with the terms of the software license and this Agreement.

11. Insurance

Lessee shall be responsible for loss or damage to the Equipment and to carry primary property damage insurance covering the Equipment naming Lessor and any assignee as an additional insured as their interest may appear.

Upon the Commencement Date and up to the time the Equipment is received by Lessor at its designated return location, Lessee shall keep the Equipment insured, at its expense, against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof. All such insurance shall be in commercially reasonable form and manner and from an insurer acceptable to Lessor, and shall name Lessor and any assignee as loss payee as their interest may appear. Lessee shall furnish to Lessor, upon request, evidence that such insurance coverage is in effect. The occurrence of such loss or damage shall not relieve Lessee of any obligations hereunder. If there is loss or damage to, or theft of, Equipment, Lessee will immediately notify Lessor in writing by registered letter with acknowledgment of receipt within five (5) business days of such occurrence.

In case of a partial loss, for whatever reason, the Agreement shall automatically continue without further notice; the Lessee will at his own expense restore the Products and transfer the property rights of any materiel or replacement components to the Lessor, where such substitutions are acceptable by the Lessor.

In case of complete destruction of the Equipment, theft or partial damage for which the repair costs exceed the value of the Equipment, the Lessee shall be obliged to pay compensation to the Lessor for early termination of the Agreement, equal to the sum of overdue Rent(s) that are due or will be due until the end of the Agreement, plus an indemnity for failure to return the Equipment, equal to the residual value of the Equipment at the end of the Agreement, as defined by Lessor. Once this amount has been paid, the Lessor will terminate the Agreement for the concerned Equipment and the Lessee will not have to pay anymore Rents for the said Equipment.

12. Alterations

- 12.1 Lessee may only modify or alter Equipment subject to the following provisions:

- a. any Parts owned by Lessor that are removed as a result of an Alteration shall remain Lessor's property and shall not be disposed of, exchanged, transferred or sold by Lessee without Lessor's prior written consent. The foregoing shall not apply to Parts removed due to a warranty repair or an engineering change by the Equipment manufacturer or its authorized service provider utilizing the manufacturer's genuine parts. In the event Lessor accepts an Alteration under a Transaction, Lessor may authorize the return to the Equipment manufacturer of any Part(s) removed from the Lessor's Equipment as a result of such Alteration provided Lessor is reimbursed for such removed Part(s) and such Alteration is provided by the manufacturer of the Equipment or its authorized service provider utilizing the manufacturer's genuine parts;
- b. prior to return to Lessor, Lessee shall remove any Alterations not owned by Lessor and restore Equipment to its original condition using any removed Lessor owned Part(s);
- c. if the Alteration is not removed or a Equipment is returned other than in its original condition using any removed Lessor owned Part(s), then Lessee agrees to pay to Lessor, unless otherwise agreed to in writing, an amount equal to any diminution in value of Equipment or the cost to restore Equipment to its original condition, qualified for the manufacturer's maintenance agreement service, if available, or, if not available, then in good condition and working order, ordinary wear and tear excepted;
- d. all Lessee owned Parts or Alterations not removed before the return of the Equipment to Lessor shall become Lessor's property, without charge, free and clear of all liens and encumbrances.

If required of the owner of the Equipment by the manufacturer, Lessor agrees to (i) allow installation of any changes, additions, and/or capacity monitoring hardware or software on the Equipment, or permit manufacturer to monitor Equipment capacity; and (ii) comply with any other terms between Lessee and Equipment manufacturer, including, but not limited to, those that relate to Equipment capacity.

13. Transactions for Alterations

- 13.1 Upon Lessee's request, Lessor may agree to offer to Lessee a Transaction for new or used Alterations, which are or have been offered for sale by the Equipment manufacturer and which contains no Part which has been changed or altered since its original manufacture. Transactions for Alterations will be at then current General Conditions and

must be coterminous with the Transaction of the underlying Equipment, and Lessee's selection of its end of Term options for the underlying Equipment, as set forth in Section 15, shall apply to the applicable Alterations.

14. Relocation, Subleasing and Assignment

- 14.1 If Lessee is not in Default, then Lessee may relocate a Product to another of its business locations in the same country provided such Lessee gives Lessor prior written notice and remains the end user of the Product. Notwithstanding the foregoing, Lessee may relocate Equipment which is either a laptop or a mobile personal device without such notice to Lessor provided the relocation of such Equipments is the result of temporary trips taken in the ordinary course of business and such Equipment is returned to the original Equipment location before the Expiry Date.
- 14.2 Lessee may not sublease any Equipment under this Agreement or make an Assignment with respect to a Transaction without Lessor's prior written consent. No subleasing or Assignment shall relieve such Lessee of its obligations under the Agreement. Any such Assignment or subleasing may require Lessee to accept additional terms and a change in Rent. Any attempt to sublease or to make an Assignment without Lessor's prior written consent is void.
- 14.3 Lessor reserves the right to recover reasonable administrative fees and expenses related to any Assignment, subleasing or relocation. Lessee is responsible for all costs, expenses, duties and taxes involved in any Assignment, subleasing, or relocation, including transit insurance and risk of loss or damage in transit. Lessee is responsible for arranging any relocation and for ensuring compliance with all regulatory conditions of any Equipment. Lessee shall not assign, lend, part with possession of, grant use of, sublease or relocate any Equipment other than as expressly permitted under this Agreement. Any sublease, relocation or assignment of Products shall be subject to all associated software license terms and it is expressly agreed that it is the Lessee's responsibility to obtain all necessary approvals.
- 14.4 Lessor may assign or otherwise transfer in whole or part its right, title and interest in any Transaction or Equipment to any third party. Lessee shall not assert against any such assignee or transferee any setoff, defense or counterclaim that Lessee may have against Lessor.

15. End of Term Options

- 15.1 At the end of any Term, Lessee may select one of the options described below and as detailed in the Schedule by providing Lessor an End of Term Notice. If Lessee fails to give its End of Term Notice at least thirty (30) days but no more than one hundred eighty (180) days prior to Expiry Date, then the Term of the Agreement will automatically continue on a month to month basis. Such Agreement will continue under the same General Conditions and at the last Rent Payment from the immediately preceding Term on a monthly basis greater than zero (but not less than the applicable Average Rent) until the later of the date that is thirty (30) days after the End of Term Notice has been received by Lessor and the date on which Lessee has satisfied all the conditions of such selected End of Term Options as described herein.
- 15.2 Extend the Transaction
At the end of each Term, So long as no Default has occurred and is continuing, Lessee may elect to renew the Transaction mutually agreed to between the Parties in writing . In the event Lessee provides its End of Term Notice in accordance with Section 15.1 selecting this option, the Agreement will be renewed at the end of the applicable Term on such agreed terms and conditions.
- 15.3 Return the Equipment
At the end of each Term, Lessee may elect to return Equipment on the applicable Expiry Date under the terms and conditions described in this Section 15 and Section 16. In the event Lessee provides its End of Term Notice in accordance with Section 15.1 selecting this option but fails to return the Equipment on or prior to the applicable Expiry Date or if Lessee returns the Equipment on or after the Expiry Date without providing such End of Term Notice, then Lessee shall continue to pay Rent to Lessor in accordance with Section 15.1 until thirty (30) days following the date on which the Equipment is received by Lessor in accordance with Section 16..
- 15.4 Purchase
At the end of each Term of the Leasing so long as no Default has occurred and is continuing, Lessee may elect to acquire the Product. If Lessee provides its End of Term Notice in accordance with Section 15.1 selecting such End of Leasing Purchase Option, Lessee shall pay all amounts due under the Leasing to Lessor, including any charges related to the End of Leasing Purchase Option. Upon receipt of all such amounts, no further Rent will be payable for the Product and then Lessor shall transfer "AS IS" to Lessee all of Lessor's right, title and interest in such Equipment, except that Lessor shall warrant the Equipment is free and clear of any liens or encumbrances created by or through

Lessor. If payment in full including any taxes and costs is not received in due time, the purchase is void and the Leasing will continue as defined in Section 15.1 retroactively from the Expiry Date.

16. Equipment Return

Upon expiration, termination or cancellation of the Agreement, the Equipment shall be returned to Lessor at Lessee's expense, to a location designated by Lessor. Lessee shall be responsible for deinstallation, packing, and return of the Equipment and any associated costs. Risk of loss or damage remains with Lessee until receipt of Equipment by Lessor at Lessor's designated location.

Lessee is responsible for the removal of all information and data contained within the Equipment prior to its return. Lessor shall have no obligation or liability in respect of any such information or data. The Equipment shall be complete and in such condition as will qualify the Equipment for the manufacturer's maintenance agreement service, if available, or, if not available, then in good condition and working order (ordinary wear and tear excepted). Lessee agrees to pay all costs and expenses incurred by Lessor to restore the Equipment to the condition described above.

Lessee shall have no further right or interest in the Equipment upon its return.

17. This Section left blank intentionally

18. Events of Default

18.1 If any of the following events occur it shall be an Event of Default by Lessee:

- a. Lessee fails to pay in full any amount when due and such failure continues for a period of seven days;
- b. Lessee fails to perform or breaches any obligation under an Agreement (to the extent not otherwise an Event of Default under any of the other provisions in this Section 18.1) and such non-performance or breach continues for a period of fifteen (15) days after Lessee receives written notice thereof from Lessor;
- c. any information provided, or representation made, by or on behalf of Lessee or any Guarantor is inaccurate, false, or misleading in any material respect;
- d. Lessee sells, assigns, transfers, relocates, subleases or disposes of a Product or a Part, or makes an Assignment in violation of the terms of this Agreement;
- e. any guarantee of a Transaction provided to Lessor shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. (i) any petition or proceeding is filed by or against Lessee or any Guarantor under any bankruptcy, liquidation, insolvency, receivership or similar law, and, if such petition or proceeding is filed against Lessee or Guarantor, is not dismissed within sixty (60) days after such filing, or (ii) Lessee or any Guarantor admits in writing its insolvency or inability to pay its debts as they come due;
- g. Lessee or Guarantor becomes insolvent, or suspends or threatens to suspend payment of its debts, or fails to pay its debts generally as they become due, or is deemed to be unable to do so;
- h. Lessee or Guarantor takes any action in connection with its dissolution, liquidation or the winding up of its affairs, including, without limitation, the commencement of any proceeding therefor, ceases doing business as a going concern, or sells or disposes of substantially all its assets or makes a bulk transfer of its assets, or makes an assignment for the benefit of creditors;
- i. Lessee or Guarantor defaults under any agreement with Lessor; or
- j. any person, entity, or group acquires a majority interest in, or the ability to control, Lessee, unless such person, entity or group owned a majority interest in or had the ability to control Lessee as of the Commencement Date.

19. Remedies

19.1 Following the occurrence of an Event of Default, Lessor may upon written notice to Lessee:

- a. terminate any and all Agreements in total or partially under any agreement Lessee has with Lessor and declare all amounts then due and to become due immediately due and payable, including all Late Payment Fee(s) and any applicable End of Leasing Purchase Option for each item of Equipment not returned to Lessor by Lessee; provided, however, that following the occurrence of an Event of Default pursuant to Section 18.1(f), all Transactions shall automatically terminate and all amounts then due and to become due shall automatically become immediately due and payable;
- b. take or recover immediate possession of each item of Equipment together with all related software (embedded therein or otherwise) and all additions, attachments, accessories, accessions and upgrades thereto and any and all substitutions, replacements or exchanges for any such Equipment or software and any and all proceeds of any of the foregoing, including, without limitations, payments under insurance or any

- indemnity or warranty relating to loss or damage to such Products under any Transaction, without any liability for this action;
- c. require Lessee to terminate use of the Program or request Licensor to terminate Lessee's right to use the Program; and
 - d. pursue any remedy at law or equity.

No right or remedy is exclusive of any other provided herein or permitted by law or equity: all such rights and remedies shall be cumulative and may be enforced concurrently or individually. Lessee shall pay all costs and expenses, including reasonable legal fees, costs and expenses, incurred by Lessor in enforcing the terms and conditions of this Agreement.

20. General

20.1 Except with respect to Section 7. entitled 'Quiet Enjoyment', Lessor has no liability of any kind.

Lessee has no remedy against Lessor for, indirect or consequential damages, any loss of profits, business, revenue or anticipated savings, loss of use, or any other commercial loss. The foregoing does not limit, amend, modify or alter Lessee's obligations to pay Rent, taxes or any other payment obligations (including without limitation, Lessee's indemnity obligations) under this Agreement. The limitation of liability in this Section shall in no way affect Lessee's rights under the Supply Agreement against Supplier or the manufacturer of the Equipment. The foregoing shall not exclude any liability in respect of death or personal injury resulting from the negligence of either Party, its employees or agents. Lessor shall not be liable for any claim, damage or loss arising from the Equipment. Under no circumstances shall Lessor be liable for loss of, or damage to, Lessee's records or data.

20.2 Lessee Representations and Warranties

Lessee represents and warrants to Lessor that as of the date it enters into an Agreement:

- a. all representations made, and any information supplied (including those related to financial status, Products and prices) are true, accurate and complete; and
- b. Lessee has selected each Product listed in the Schedule and accepts responsibility for its use and the results obtained therefrom.

20.3 Security

As a condition of entering into a Transaction, Lessor may require security with respect to Lessee's obligations as specified in the Schedule, which security must be in form and substance acceptable to Lessor. As it relates to any security deposit, Lessor may apply such deposit against any payment default or hold it until all of Lessee's obligations hereunder are satisfied.

20.4 Survival

Lessee's obligations under this Agreement, which by their nature would continue beyond the expiration of a Transaction, will survive the expiration or termination of such Transaction.

20.5 Notices

A notice shall be deemed valid if it is handed over at or sent recorded delivery or registered post to the office of the other Party, to the address specified in the Schedule, subject to later amendments communicated by the other Party in writing. The post mark shall provide proof of validity. Notices shall be deemed to be received, if personally or by recorded delivery, at the time of delivery, or within two Business Days from the date the mail was posted

20.6 Waiver and Severability

Any failure or delay in exercising a right or remedy at law or in equity shall not constitute a waiver of that right or remedy, nor a waiver of any other rights or remedies, in or under this Agreement, at any time. Any waiver of a right or remedy is required to be in writing signed by the Party waiving such right or remedy. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions of this Agreement shall not be affected or impaired.

20.7 Benefit of Agreement (Third Party Rights)

Except in the event of a permitted assignment, no term of this Agreement is intended to confer a benefit on, or be enforceable by, any third party..

20.8 Further Assurance

Each Party will, at its own cost and expense, use all reasonable endeavors to do such further acts and execute such documents as may be necessary to give effect to the provisions of this Agreement.

20.9 Announcements and Publicity

Neither Party will make any public announcement relating to this Agreement, or the subject matter therein, without the prior written approval of the other Party; except as required by law or by any legal or regulatory authority, in which case it shall notify the other Party of the announcement as soon as reasonably practicable.

20.10 Accounting

Neither IBM nor Lessor makes any representation whatsoever regarding Lessee's accounting treatment applicable to this Agreement or any Schedule. IBM accounts for Transactions under local accounting standards and under U.S. GAAP (Generally Accepted Accounting Principles) for U.S. reporting purposes. To that respect, as far as IBM's reporting obligations under US standards are concerned, kindly note that IBM accounts for receivables under this Agreement as financing receivables. Further information is available upon simple request.

20.11 Indemnity

Lessee shall indemnify and defend Lessor in full against any losses, claims, settlement payments, interest, awards, judgments, damages (including consequential or special damages), fines, fees (including reasonable legal fees and disbursements), expenses and penalties (collectively, "Losses") arising out of or relating to this Agreement or from Lessee's possession and use of the Products that are (i) ordered to be paid by Lessor by a court, governmental agency, or regulatory body, (ii) incurred or paid by Lessor in connection with legal proceedings in respect of third party claims, or (iii) incurred or paid by Lessor in connection with any settlement by Lessor that has been consented to by Lessee. This indemnity shall not apply to Losses caused solely by gross negligence or willful misconduct of Lessor. Lessee agrees that upon written demand by Lessor, Lessee shall assume full responsibility for the defense of such claim.

20.12 Business Contact Information, Personal Data required under the Anti Money Laundering Legislation (where applicable) and Account Data

a. Business Contact Information

IBM and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of Lessee's personnel and authorized users, for example name, business telephone, address and email, in connection with this Agreement wherever they do business. Where notice to or consent by the individuals is required for such processing, Lessee will notify and obtain the consent of any such individuals.

b. Personal Data required under the Anti Money Laundering Legislation (where required)

In order to fulfill its obligation under applicable Anti Money Laundering laws and regulations (AML Legislation) IBM and its affiliates, and their contractors and subprocessors, may store and otherwise process personal information, for example names, addresses, date of birth and identification information, of the persons who are authorized to act on behalf of the Lessee and of Lessee's beneficial owners according to the definition of the AML Legislation. Such information will solely be used for the purpose of compliance with AML Legislation. Where notice to or consent by the individuals is required for such processing, Lessee will notify the individuals and obtain the consent of any such individuals. The IBM Privacy Statement at <https://www.ibm.com/privacy/details/be/en/> provides additional details on IBM's collection and use of personal information.

c. Account Data

Account Data is information, other than data and information ("Content") from all equipment and BCI, that Lessee provides to IBM to enable Lessee's acquisition and use of IBM products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Lessee's use of IBM products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/be/en/> and applicable attachments or transaction documents provides additional details.

20.13 Financial Statements

If not publicly available, Lessee agrees to provide its annual audited financial statements within ninety (90) days of Lessee's fiscal year end and quarterly, unaudited financial statements, along with a certificate from Lessee's chief

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financial officer stating that such financial statements are presented fairly accordance with generally accepted accounting principles in effect, within forty five (45) days of the end of each of Lessee's fiscal quarters.

20.14 Direct Debit

When Lessor requires or Lessee requests direct debit, Lessee shall execute applicable documentation to effect such direct debit arrangement.

20.15 Copies

Any such COA, Schedule and documents related thereto may be sent to Lessee by Lessor in soft copy format, such as a PDF file. Where Lessee has printed any such document for signature from such soft copy format, Lessee represents and warrants that no changes have been made to the text. Any such changes are void.

Any COA, any Schedule and any documents related thereto made by reliable means (for example photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

20.16 Counterparts

All documents are made in as many copies as the number of Parties, each being considered as original.

20.17 Lessor's Payment

If Lessee fails to pay taxes as required under this Agreement, discharge any liens or encumbrances on the Equipment (other than those created by or through Lessor), or otherwise fails to perform any other obligation under this Agreement, Lessor may act in Lessee's stead so as to protect Lessor's interests, in which case Lessee shall immediately reimburse Lessor the cost thereof.

20.18 Miscellaneous

Each Party shall be required to allow the other Party reasonable time to comply with its obligations before commencing proceedings.

In the absence of any public order provision to the contrary, the Parties shall refrain from making claims against the other Party more than two (2) years after the fact, giving rise to the complaint occurred.

Either Party may communicate with the other Party by electronic means which includes emails. Such an electronic communication shall serve as a signed document if such procedures are normally used in the Lessee's commercial dealings. An identification code (USERID) contained in an electronic document, is sufficient in law to establish the identity of the author and the authenticity of the document.

21. Governing Law

21.1 This Agreement will be governed by, and construed in accordance with the laws of the country where the Lessor listed on the Schedule is registered and the Parties submit to the jurisdiction of the courts located in such country.

By signing the Schedule referring to these General Conditions, the Parties agree to the terms of these General Conditions.