

General Conditions for Loans

IBM Belgium Financial Services Company SPRL/BVBA

General Conditions for Loans reference No.: General Terms and Conditions for Loans dated 1 March 2016

These General Conditions for Loans is made between IBM Belgium Financial Services Company SPRL/BVBA ("Lender") and the Entity who signs the Schedule (the "Borrower").

Lender may from time enter into Loans with Borrower. Such Loans 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;

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

"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 Lender is located;

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

"Commencement Date" means the date the Loan commences in accordance with the Section 4.1;

"Conditions Precedent" means, with respect to the effectiveness of a Loan, all statements, certificates, documents, instruments, and additional terms and conditions required by Lender 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;

"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 the Lender is located;

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

"Event of Default" means any of the events specified in Section 8 as an Event of Default;

"Financed Product" means any product, service, or other item that is specified on the Schedule;

"Guarantor" means an Entity providing a guarantee of Borrower's obligations arising under any Agreement;

"IBM" is a member company of the Enterprise of International Business Machines Corporation;

"Initial Payment Term" means the number of consecutive Payment Periods specified on the Schedule beginning with the initial Payment Period;

"Loan" means a loan by Lender to Borrower, the proceeds of which are paid by Lender to Supplier, or paid to Borrower as reimbursement of its payment to Supplier with Borrower's prior written consent, to finance Borrower's acquisition of the Financed Product.

"Party" means either Borrower or Lender;

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

"Payment" means the amount payable as Repayment, together with any other amounts payable under this Agreement;

"Planned Commencement Month" means the month indicated on the Schedule as the "Planned Commencement Month";

"Repayment" means the amount specified on the Schedule as "Repayment" or otherwise included in the "Total Periodic Payment" on the Schedule, which amount consists of principal and finance charges for the Loan and is due and payable each Payment Period for the number of Payment Periods specified on the Schedule;

"Schedule" means a document that contains the details of the Loan and incorporates the terms and conditions of these General Conditions by reference;

"Supplier" means the Entity supplying Financed Product under a Supply Agreement;

"Supply Agreement" means the agreement between Supplier and Borrower for the acquisition of Financed Products;

and

“**Validity Date**” means the date specified by Lender in a Schedule as the “Validity Date”.

2. Agreement Structure

- 2.1 These General Conditions, the Schedule, any COA, and any applicable attachments (amendments or addenda), are the complete and exclusive agreement between the Parties regarding the Loan, and replace and prevail over any prior oral or written communications between the Parties relating to such Loan. Each Loan is effective when the Schedule containing such Loan 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 Borrower may, upon consent of Lender, enter into Schedules which incorporate in full the applicable terms and conditions set out in these General Conditions. Each Schedule shall constitute a separate agreement.
- 2.4 Lender may, with a least three months prior written notice to Borrower, 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 Lender and Borrower.
- 2.5 This Agreement becomes effective upon signature by Lender and Borrower of a Schedule.
- 2.6 This Master Agreement sets out the general terms and conditions under which, from time to time, Lender, in its capacity as the lender of a Loan, and Borrower, in its capacity as a borrower of a Loan, may, from time to time, enter into Loans on the terms and subject to the conditions of the applicable Schedule incorporating this Master Agreement. For each Loan, Borrower agrees to repay in the amounts and on the due dates specified in this Agreement, and to pay such other Payments as they may become due and payable hereunder.

3. Payment and Taxes

- 3.1 The initial Payment Period for each Loan shall begin on the first day of the month following the Commencement Date. Borrower agrees to pay Repayments on the due dates and in the amounts specified in the Schedule or hereunder. Borrower will pay as instructed by Lender 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, Borrower 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 of applicable law (the “Late Payment Fee”).
- 3.3 Upon the Commencement Date, Borrower agrees that Borrower’s obligations under this Agreement become irrevocable, and Borrower’s obligation to make all Payments in full when due, becomes absolute and unconditional, without set off, counterclaim, withholding, deduction, or defense of any kind.
- 3.4 Payments received by Lender will be applied in the following order: first to Late Payment Fees, second to overdue Repayments, third to the interest portion of the current Repayment, fourth to principal portion of the current Repayment, and fifth to other Payments.
- 3.5 Borrower is responsible for any taxes and charges arising in respect of any Loan present and future, whatever their nature. If the Lender does not finance the VAT, Borrower shall have to pay directly the VAT amount to the Supplier for each Supplier’s invoice. In the absence of any statutory provision to the contrary, all payments incurred by the Lender with a view to the collection of his debt or the consolidation of his guarantees (protest costs, return of unpaid bills of

exchange, miscellaneous expenses and professional fees), shall be to account of the Borrower, who expressly undertakes to repay them by way of compensation.

4. Loan Commencement

4.1 The Loan will commence on the Commencement Date provided that:

- a. the Schedule is duly executed by Borrower and received by Lender on or prior to the Validity Date and is accepted by Lender;
- b. the Commencement Date occurs by the end of the Planned Commencement Month;
- c. no Default is continuing on such Commencement Date and Borrower has satisfied all the Conditions Precedent hereunder and in the Schedule; and
- d. Borrower has authorized Lender to pay the Supplier either by providing as applicable a copy of the Supplier's invoice with the written words "Approved for payment" and duly executed by the Borrower, or a duly executed COA. or a notice in a form mutually acceptable to both Parties. All duly accepted Supplier Invoices must reach the Lender before the Validity Date specified in the Schedule.

Provided that the conditions in this Section have been satisfied, the Commencement Date for a Loan will be the date Lender pays Borrower or Supplier or otherwise funds the Loan as agreed to in writing by the Parties. If any of the foregoing conditions are not satisfied, Lender shall have no obligation or liability with respect to the Agreement. However, Lender, in its sole discretion, may commence the Loan or issue a new Schedule to Borrower.

5. Ownership

5.1 Borrower is the owner of any equipment and the licensee of any software which is financed as a Financed Product hereunder.

6. Loan Prepayment

6.1 If Borrower wishes to prepay the Loan, Borrower must give Lender one month's prior written notice and Borrower must pay all amounts then due and to become due under the Loan.

7. Assignment

Borrower may not make any Assignment of any Loan. Lender may assign or otherwise transfer in whole or part its right, title and interest in any Loan to any third party. Borrower shall not assert against any such assignee or transferee any setoff, defense or counterclaim that Borrower may have against Lender.

8. Events of Default

8.1 If any of the following events occur it shall be an "Event of Default" by Borrower:

- a. Borrower fails to pay in full any amount under this Agreement when due and such failure continues for a period of seven days;
- b. Borrower 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 8.1) and such non-performance or breach continues for a period of fifteen (15) days after Borrower receives written notice thereof from Lender;
- c. any information provided, or representation made, by or on behalf of Borrower or any Guarantor is inaccurate, false, or misleading in any material respect;
- d. any guarantee of a Loan to Lender shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. any petition or proceeding is filed by or against Borrower or any Guarantor under any bankruptcy, liquidation, insolvency, receivership or similar law, and, if such petition or proceeding is filed against Borrower or Guarantor, is not dismissed within sixty (60) days after such filing, or (ii) Borrower or any Guarantor admits in writing its insolvency or inability to pay its debts as they come due;
- g. Borrower 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. Borrower 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. Borrower or Guarantor defaults under any agreement with Lender or under any other Loan beyond any applicable cure period; or

- i. any person, entity or group acquires a majority interest in, or the ability to control, Borrower, unless such person, entity or group owned a majority interest in or had the ability to control Borrower as of the Commencement Date.

9. Remedies

9.1 Following the occurrence of an Event of Default, Lender may upon written notice to Client:

- a. terminate any and all Agreements in total or partially under any agreement with IBM Belgium Financial Services Company SPRL/BVBA and declare all amounts then due and to become immediately due and payable, including all Late Payment Fee(s); provided, however, that following the occurrence of an Event of Default pursuant to Section 8.1(f), all Loans shall automatically terminate and all amounts then due and to become due shall automatically become immediately due and payable; and
- b. 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. Borrower shall pay all costs and expenses, including reasonable legal fees, costs and expenses, incurred by Lender in enforcing the terms and conditions of this Agreement. In any event of a debt becoming payable, the Lender will proceed by all legal means. Proof of the Borrower's debt, if sufficiently proved, shall be provided by the Agreement and the Lender's accounting documents and papers, more particularly unpaid debit notifications.

10. General

10.1 Exclusions

In no event shall Lender have any liability for, nor shall Borrower have any remedy against Lender for any damage including, indirect or consequential damages, any loss of profits, business, revenue or anticipated savings, loss of use, or any other commercial loss. 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.

10.2 Borrower Representations and Warranties

Borrower represents and warrants to Lender that as of the date it enters into an Agreement that all representations made, and any information supplied (including those related to its financial status, Financed Products, and prices) are true, accurate and complete.

10.3 Security

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

10.4 Survival

Borrower's obligations under this Agreement, which by their nature would continue beyond the expiration of a Loan, shall survive the expiration or termination of such Loan.

10.5 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 delivered, if personally or by recorded delivery, at the time of delivery, or within three Business Days from the date the mail was posted.

10.6 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.

10.7 Benefit of Agreement (Third Party Rights)

No term of this Agreement is intended to confer a benefit on, or be enforceable by, any third party or person.

10.8 Further Assurance

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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.

10.9 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.

10.10 Accounting

Neither IBM nor Lender makes any representation whatsoever regarding Borrower's accounting treatment applicable to this Agreement. IBM accounts for this Agreement under local accounting standards and under U.S. GAAP 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 demand.

10.11 Indemnity

Borrower shall indemnify and defend Lender 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 arising out of or relating to this Agreement. Borrower agrees that upon written demand by Lender, Borrower shall assume full responsibility for the defense of such claim.

10.12 Data Privacy

For the purposes of this Section, the following additional definitions shall apply:

"Business Contact Information" means business-related contact and contract information disclosed by Borrower to Lender, including names, job titles, business addresses, telephone numbers, account activity and email addresses of Borrower's employees and contractors.

"Business Contact Personnel" means the Borrower employees and contractors to whom the Business Contact Information relates.

"Data Protection Authority" means the Commission for the protection of the private life in Belgium.

"Data Protection & Electronic Communications Legislation" means in Belgium (a) the law of 8 December 1992 pursuant to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and (b) the law of 13 June 2005 Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

"IBM Group" means International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective 'IBM Business Partners' and subcontractors. 'Business Partners' for Lender shall include credit reporting agencies, and current and potential investors, insurers and assignees. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

Borrower authorizes Lender to process and use Business Contact Information for the purpose of furthering the business relationship between Borrower and IBM Group, including the marketing and selling of its products and services (the "Specified Purpose"). Borrower agrees that Business Contact Information may be disclosed to, and processed and used by, IBM Group in pursuit of the Specified Purpose. Lender agrees that all Business Contact Information will be processed in accordance with the applicable Data Protection & Electronic Communications Legislation and will be used only in accordance with the Specified Purpose. To the extent that the Data Protection & Electronic Communications Legislation requires them, Borrower represents that it has obtained (or will obtain) such consents from and has issued (or will issue) such notices to, the Business Contact Personnel as are necessary in order to enable the IBM Group to process and use the Business Contact Information to contact them, including by email, in accordance with the Specified Purpose. Borrower consents to Lender transferring Business Contact Information outside the European Economic Area, provided that any such transfer is made on contractual terms approved by the Data Protection Authority as ensuring adequate safeguards for the rights and freedoms of data subjects.

Borrower further agrees to:

- a. allow Lender to provide details of this Agreement to Suppliers or IBM Business Partners with whom Borrower has a supply relationship in any country where IBM does business;

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- b. allow Lender to provide account information with respect to Borrower to credit reporting agencies; and
- c. allow Lender to provide details of this Agreement and Borrower to investors, insurers and assignees and potential investors, insurers and assignees.

10.13 Financial Statements

If not publicly available, then, upon Lender's request, Borrower agrees to provide Lender its annual audited financial statements within ninety (90) days of Borrower's fiscal year end and its quarterly, unaudited financial statements, along with a certificate from Borrower's chief financial officer stating that such financial statements are prepared in accordance with generally accepted accounting principles in effect, within forty-five (45) days of the end of each of Borrower's fiscal quarters.

10.14 Direct Debit

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

10.15 Copies

Any COA, any Schedule, and any documents related thereto may be sent to Borrower by Lender in soft copy format, such as a PDF file. Where Borrower has printed any such document for signature from such soft copy format, Borrower 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.

10.16 Counterparts

Any Schedule, any Certificate of Acceptance, and any documents related thereto may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute but one and the same document.

10.17 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 faxes and emails. Such an electronic communication shall serve as a signed document if such procedures are normally used in the Borrower'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.

11. Governing Law

- 11.1 This Agreement will be governed by, and construed in accordance with the laws of the country where the Lender 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.