

Master Lease Agreement - 07/2020

This Master Lease Agreement is made between Compagnie IBM France SAS ("IBM Company") and the Entity who signs the Schedule (the "Lessee").

IBM Company and Lessee (as hereinafter defined) may from time to time execute Schedules pursuant to, and incorporating the terms of, this Master Lease Agreement ("Master Agreement") and such other terms and conditions as the Parties may agree to in writing.

1. **Definitions.** Unless otherwise defined, the following capitalized terms shall have the following meanings when used herein and in any document incorporating the terms of, or referring to, this Master Agreement.

**"Acceptance Date"** means the date on the Certificate of Acceptance when the Lessee accepts the Equipment and any Product(s);

**"Agreement"** means, with respect to a Schedule, the Schedule executed by the Parties as such Schedule incorporates the terms of this Master Agreement, and as each may be amended or modified from time to time in writing by IBM Company and Lessee;

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

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

**"Average Rent"** means the average amount of Rent, on a per-month basis, calculated using the sum of the Rent payments during the applicable Term divided by the number of Payment Periods during such 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 France;

**"Certificate of Acceptance" or "COA"** means a certificate issued by IBM Company, and signed by Lessee, denoting Lessee's acceptance of the Products and authorizing IBM Company to pay Supplier;

**"Commencement Date"** means the date the Equipment ships in accordance with the terms on the Schedule or, in the absence of such terms on the Schedule, then the Acceptance Date subject to the terms in Section 5.;

**"Conditions Precedent"** means all statements, certificates, documents, instruments, and additional terms and conditions required by IBM Company under this Master Agreement and the Schedule to be provided or satisfied on or prior to the Commencement Date;

**"Lessee" or "Customer"** means the Entity that signs the Schedule;

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

**"End of Lease Date"** means the date that the Term of the Lease expires, terminates or is cancelled;

**"End of Lease Notice"** means the notice delivered by Lessee to IBM Company in writing, or as otherwise agreed to by the Parties, specifying the end of Lease 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 IBM Company is located;

**"Entity"** means any natural person, limited liability company, association, firm, corporation, partnership, trust, joint venture, unincorporated organization or other entity whatsoever;

**"Equipment"** means a hardware device, its features, microcode, conversions, upgrades, elements, or accessories, or any combination thereof or any other item of equipment that is specified on the Lease table of a Schedule, which is leased by IBM Company to Lessee hereunder;

**"Equipment Purchase Request"** means, upon Lessee's request, an offer by IBM Company in its sole discretion to sell to Lessee an item of Equipment as set forth in Section 17, at a purchase price equal to either a) or b) as specified under the "EOL Option" on the Schedule:

- a. the indicative amount specified by IBM Company, or
- b. the Fair Market Value of such Equipment;

**"Event of Default"** means an event of default as defined in Section 18;

**"Fair Market Value" or "FMV"** means, with respect to an item of Equipment, the fair market value of such Equipment as determined by IBM Company 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;

**"Guarantor"** means an Entity providing a guarantee of Lessee's obligations arising under the Agreement;

**"IBM Company" or "Lessor"** means IBM France SAS that signs the Schedule;

**"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, with respect to Products, the initial term of the Lease for such item, commencing on the applicable Commencement Date and expiring after all of the consecutive Payment Periods specified on the Schedule;

**"Lease"** means a lease of Equipment and any Products under the Agreement as specified on the Lease table on the Schedule;

**"Part"** means any original component or element of 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 IBM Company; and **"Parties"** means Lessee and IBM Company;

**"Payment"** means the amount payable as the Rent under a Lease and/or any other amounts payable under the Agreement;

**"Payment Date"** means the date in each Payment Period on which Rent is due and payable. If the Payment Type is designated as "Advance", the Payment Date shall be the first day of each Payment Period, and, if the Payment Type is designated as "Arrears", the Payment Date shall be the last day of each Payment Period;

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

**"Payment Type"** means the payment type specified on the Schedule, which shall be either "Advance" or "Arrears";

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

**"Product(s)"** means Equipment and related software and/or services which are leased under the Agreement;

**"Renewal Term"** means, with respect to Equipment, if applicable, the term of the Lease consisting of a number of consecutive Payment Periods commencing on the day immediately following the last day of the preceding Term for such Equipment and expiring at the end of the last Payment Period in the Renewal Term. The number of Payment Periods in a Renewal Term shall be specified on the Schedule under "Renewal Term", or otherwise agreed to in writing by the Parties;

**"Rent"** means the amount due and payable each Payment Period for the lease of Products; Rent for the Initial Term is the amount specified in the Schedule as "Rent" or is otherwise included in the "Total Periodic Payment";

**"Residual Value"** means the amount (if any) described in the Schedule and represents to each party a fair estimate of the forecasted value of the Equipment at the end of a Lease;

**"Schedule"** means a document that refers to and incorporates the terms and conditions of this Master Agreement and contains the details of the Lease that is the subject matter to that Schedule;

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

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

**"Term"** means the Initial Term, any Renewal Term, or the term of any automatic extension under Section 15.1, as applicable; and

**"Validity Date"** means the date specified by IBM Company in a Schedule as the "Validity Date", which is the date by which the executed Schedule must be returned to IBM Company.

## 2. Agreement Structure

2.1 An "Agreement" hereunder shall consist of this Master Agreement, the Schedule, and their applicable attachments and addenda, and represents the complete and exclusive agreement between the Parties regarding the subject matter of the Schedule, and replaces any prior oral or written communications between the Parties relating thereto. Each Agreement is effective when 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. the COA (solely with respect to Equipment model, Rent and total Rent as applicable);
- b. attachments or addenda to the Schedule;
- c. the Schedule; and
- d. this Master Agreement.

- 2.3 A member of the Lessee's Enterprise may, upon consent of IBM Company, enter into Schedules incorporating the terms and conditions set out in this Master Agreement. Each Schedule shall constitute a separate lease agreement between the Parties thereto.
- 2.4 The termination or version update of this Master Agreement shall have no effect upon any Schedule executed by Lender and Borrower prior to the date of termination of this Master Agreement.
- 2.5 This Master Agreement sets out the general terms and conditions under which, from time to time, IBM Company may lease Products to Lessee and Lessee may lease Products from IBM Company. For each Lease, Lessee agrees to pay Rent in the amounts and on the due dates specified hereunder, and to pay such other Payments as they may become due and payable hereunder. Without limiting any of IBM Company's other rights under the Agreement, IBM Company reserves the right to reject any third party invoice that is (i) not for information technology equipment, software and related services, or (ii) dated more than ninety (90) days prior to the date IBM Company receives a COA from Lessee.

**3. Payment and Taxes**

- 3.1 Rent shall be due and payable on the Payment Date of each consecutive Payment Period for the applicable number of Payment Periods. The initial Payment Period for a Lease shall begin on the first day of the month following the Commencement Date. Lessee will remit each Payment payable hereunder to the address specified in the invoice sent by IBM Company to Lessee or elsewhere as otherwise instructed by IBM Company in writing. 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 In compliance with the provisions of the article 441-6 of the French Commercial Code, for any Payment not paid in full by its due date, Lessee also agrees to pay Lessor, in addition to the sums due and on Lessor request, a late payment fee calculated by applying the European Central Bank rate for its most recent refinancing operation plus ten (10) points, from the due date until payment is effectively and entirely made (the "Late Payment Fee"). In case of late payment, Lessee shall pay Lessor a fixed indemnity of forty (40) euros, to cover Lessor's debt collection costs. Should these costs exceed forty (40) euros, Lessor shall be entitled to complementary indemnification, subject to justification of the amount claimed. This provision is without prejudice to the other measures Lessor will be entitled to take in compliance with the provisions of article 19 hereinafter.
- 3.3 Lessee agrees that, upon the Commencement Date, Lessee's obligations under the Agreement become irrevocable and independent of acceptance of the Financed Product, and Lessee's obligation to make all Payments in full when due, becomes absolute and unconditional, without set off, counterclaim, withholding, deduction, abatement, recoupment, or defense of any kind, and irrespective of errors or deficiencies in or the performance or the quality of the Product, or the performance by IBM Company or any other third party Supplier.
- 3.4 At IBM Company's discretion, following the occurrence of a Default, Payments received by IBM Company may be applied in the following order: first to Late Payment Fees, second to overdue Rent, and third to other Payments.
- 3.5 All prices, fees, charges and/or other possible amounts are stated excluding VAT (Value Added Tax). Where VAT is due this shall be added to the payable prices, fees, charges and/or other possible amounts.

**4. Supplier**

- 4.1 The scope of this Agreement being the supply and the lease of the Products, the Lessee acknowledges that IBM Company's obligations are obligations of means. The Lessee assumes the choice of the Products, and asserts that it has checked the compliance of the Products with its own needs.

The Lessee states that it orders the Products for its own needs, and not in order to resale them, directly or indirectly, and create, because of this, a market channel for the Products.

- 4.2 Rights and Obligations concerning Products not supplied by IBM Company:

For each Product, Lessee represents that it has the right to assign to IBM Company, and hereby assigns to IBM Company, effective upon signing the Schedule, but subject to the occurrence of the Commencement Date, its right to acquire from and its obligation to pay its Supplier for the Product up to the amount agreed by IBM Company to be funded.

All other obligations as defined in the Supply Agreement between Lessee and Supplier governing the acquisition of the Product shall remain with Lessee. As between IBM Company and Lessee, the rights and obligations of Lessee in relation to the Product are set out exclusively in the Agreement. Nothing in the Agreement shall affect any remedies Lessee may have against, or any obligations Lessee may have to, the Supplier, licensor, manufacturer of the Equipment, or other third party.

Lessee shall make any claim solely against the Supplier, licensor, manufacturer of the Equipment, or other third party if the Product is unsatisfactory for any reason, and Lessee will inform IBM Company of any legal proceedings beforehand.

The Parties agree that during the Term of the Lease, so long as Lessee is not in default, Lessee shall have the nonexclusive benefit of any warranties for such Equipment made available to IBM Company under the Supply Agreement as the owner of the Equipment and that Lessee is authorized to act on IBM Company's behalf and for IBM Company's

benefit, concerning any warranty service for the Equipment, to the extent permitted under the Supply Agreement or as otherwise agreed to by the Supplier. The aforementioned authority shall not detract from IBM Company's rights in relation to the Equipment.

For Products not supplied by IBM Company, IBM Company may pay fees to the Supplier and/or other third-party companies for administrative services provided in connection with the transaction or transactions contemplated under the Agreement. Details are available upon request.

**5. Lease Commencement**

5.1 The Lease will commence on the Commencement Date provided that:

- a. the Schedule is duly executed by Lessee and received by IBM Company on or prior to the Validity Date and is accepted by IBM Company;
- b. the Commencement Date occurs by the end of the Planned Commencement Month;
- c. Lessee has satisfied all of the Conditions Precedent;
- d. IBM Company receives a duly executed Certificate of Acceptance within ten (10) days of the Acceptance Date specified on such Certificate of Acceptance; and
- e. no Default has occurred.

If any of the foregoing conditions are not satisfied, IBM Company shall have no obligation or liability with respect to the Agreement or the Products, including any obligation to pay the purchase price of the Products. Provided IBM Company has a duly executed Schedule and COA, IBM Company, in its sole discretion, may commence the Lease or issue a new Schedule to Lessee.

5.2 The Lease cannot be terminated during the Term, except as expressly stipulated herein, unless terminated by a court decision or otherwise mutually agreed in writing.

**6. Ownership**

6.1 IBM Company is the owner of the Equipment and Lessee shall have no right, title or interest therein except as specified in this

Agreement. Except for any purchase from IBM Company during the Term of the Lease or at the end of the Term, if, for any reason Lessee does acquire title to the Equipment (including any Parts thereof), or to replacement equipment acquired as a result of manufacturer's maintenance or warranty, then Lessee shall be deemed to have transferred such title to IBM Company 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 at its expenses as may be required to protect IBM Company's ownership against claims arising directly or indirectly from Lessee's possession or use of the Equipment.

The Products are and will have to remain at any times movable, and shall not become "real property by destination" even if they turn out to become secured or dedicated to a real property.

In case of assignment or pledging of Lessee's goodwill, the Lessee shall make all necessary arrangements so that the Products are not assigned nor included in the pledge, and IBM Company's rights on the Products are brought in time to assignor or lien holder's attention.

In order to enable IBM Company to proceed with the legal publicity of this operation on the register of the competent Commercial Court, the Lessee will immediately communicate to IBM Company the necessary information and documents, and the possible amendments made to the Agreement and the related documentation, failing which the Lessee will have to guarantee IBM Company for any damage it may suffer.

For any software installed on the Equipment, Lessee shall enter into a separate software license or other agreement with the software licensor for the use of the software and such software shall remain the property of the licensor and be governed by the software license between licensor and Lessee. Such software license shall not be affected by or subject to the Lease of Equipment and, with respect to the software license, IBM Company shall have no rights or obligations thereunder. Such software shall not be included with any Equipment returned to IBM Company hereunder. The Equipment is and shall at all times be and remain personal property and shall not become a fixture or realty.

**7. Quiet Enjoyment**

7.1 IBM Company covenants to Lessee that IBM Company or any third party acting or lodging a claim on its behalf, by serving a writ or by bringing any other legal action will not interfere with Lessee's quiet enjoyment of the Products during the Term of the Lease so long as no Event of Default shall have occurred.

**8. Liens and Charges**

8.1 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 IBM Company.

**9. Inspection and Marking**

9.1 Lessee shall permit IBM Company, upon prior notice, to inspect any Equipment, Parts, and maintenance records during Lessee's normal business hours and subject to Lessee's normal security procedures. Upon IBM Company's reasonable request, Lessee will immediately affix identifying labels, plates or tags to the Equipment or Part(s) identifying IBM Company as the owner of 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 at a Lessee owned or leased business location, unless otherwise preapproved by IBM Company, and in a proper environment as defined by the manufacturer and/or Supplier and in compliance with all applicable laws and regulations. As it relates to any software, embedded or otherwise, Lessee agrees to comply with the terms of the software license and the Agreement.

**11. Insurance**

11.1 Lessee shall be responsible for loss or damage to the Equipment and to carry primary property damage insurance covering the Equipment naming IBM Company and any assignee as an additional insured as their interest may appear and granting IBM Company the right to directly receive the payment of insurance indemnities.

11.2 Upon the Commencement Date and up to the time the Equipment is received by IBM Company 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 reasonably acceptable to IBM Company. Lessee shall furnish to IBM Company, 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 IBM Company and, within five Business Days of such occurrence, either:

- a. repair or replace the Equipment at Lessee's expense, passing to IBM Company full legal and beneficial title to any replacement equipment or replacement parts, free of all liens and encumbrances of any kind, provided such replacement equipment is acceptable to IBM Company, or
- b. pay an amount equal to (i) a termination fee, for early lease termination, equal to all the outstanding Rents due or to be due for such Product until the end of the Lease, and (ii) a penalty charge, for not returning the Products, equal to the projected FMV of such Product at the end of the Lease, as determined by IBM Company. Thereafter the portion of the Lease with respect to such Equipment shall be terminated and Lessee shall owe no further Rent with respect to such Equipment. Any insurance indemnity received directly by the IBM Company as an additional insured for the Product concerned shall be deducted from the compensation due by the Lessee under this Section 11.2b

11.3 Lessee shall furnish to IBM Company, upon request by IBM Company from time to time, evidence that such insurance coverage required by the Agreement is in effect.

**12. Alterations**

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

- a. any Parts owned by IBM Company that are removed as a result of an Alteration shall remain IBM Company's property and shall not be disposed of, exchanged, transferred or sold by Lessee without IBM Company's prior written consent. The foregoing shall not apply to Parts removed due to a warranty repair or an engineering change by the manufacturer of the Equipment or its authorized service provider utilizing the manufacturer's genuine parts;
- b. In the event Lessee leases an upgrade with IBM Company, IBM Company may authorize the return to the Equipment manufacturer of any Part(s) removed from the leased Equipment as a result of such upgrade, provided that the price of the upgrade is reduced by the value (acceptable to IBM Company) of the removed Part(s) and such upgrade is provided by the manufacturer of the Equipment or its authorized service provider utilizing the manufacturer's genuine parts;
- c. prior to return to IBM Company, Lessee shall remove any Alterations not owned by IBM Company and restore the Equipment to its original condition using any removed IBM Company owned Part(s);
- d. if the Equipment is returned other than in its original condition, ordinary wear and tear excepted by IBM Company, then Lessee agrees to pay to IBM Company, unless otherwise agreed to in writing, (i) an amount equal to any decrease in value of Equipment compared to the value of such Equipment in its original condition; or, (ii) the cost to restore the Equipment to its original condition, ordinary wear and tear excepted, 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;
- e. the Alteration is permitted under the terms of the Supply Agreement; and
- f. all Parts or Alterations not owned by IBM Company that are not removed before return of the Equipment to IBM Company shall become IBM Company's property, without charge, free and clear of all liens and encumbrances.

**13. Leases for Alterations**

13.1 Upon Lessee's request, IBM Company may agree to lease new or used Alterations to Equipment that are or have been offered for sale by the manufacturer of the Equipment and that contains no Part that has been changed or altered since its original manufacture. Leases for Alterations will be at then current terms and conditions and must be coterminous with the Lease of the underlying Equipment, and Lessee's selection of its end of Lease options for the underlying Equipment, as set forth in Section 15, shall apply to the applicable Alterations.

**14. Relocation, Sublease and Assignment****14.1 Relocation**

If Lessee is not in Default, then Lessee may relocate Products to another of its business locations in the same country provided such Lessee gives IBM Company prior written notice and remains the end user of the Products. Notwithstanding the foregoing, Lessee may relocate Equipment that is either a laptop or a mobile personal device without such notice to IBM Company provided the relocation of such Equipment is the result of temporary trips taken in the ordinary course of business and such Equipment is returned to its original location.

**14.2 Sublease and Assignment**

Lessee may not sublease any Product or make an Assignment to any Enterprise, including any Enterprise located in the French territory, without IBM Company's prior written consent. No sublease shall relieve such Lessee of its obligations under the Lease. Any such Assignment or sublease may require Lessee to accept additional terms and a change in Rent. Any attempt to sublease or to make an Assignment without IBM Company's prior written consent is void.

**14.3 Lessee Expenses and Responsibilities**

IBM Company reserves the right to recover reasonable administrative fees and expenses related to any Assignment, sublease or relocation. Lessee is responsible for all costs, expenses, duties and taxes involved in any Assignment, sublease, 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 for import or export of any Products. Lessee shall not assign, lend, part with possession of, grant use of, sublease or relocate any Products 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. Lessee agrees that any Schedule under this Master Agreement shall be binding upon Lessee's successors and permitted assigns.

14.4 Each party will comply with all applicable export and import Laws and associated embargo and economic sanction regulations, including those of France and the United States, that prohibit or restrict the export, re-export, or transfer of Products, technology, services or data, directly or indirectly, to certain countries, including those that prohibit or limit export or services for certain uses or to certain end users.

**15. Equipment End of Lease Options**

15.1 At the end of the Term of the Lease, Lessee may select one of the options listed below or as detailed in the Schedule by providing IBM Company an End of Lease Notice. If Lessee fails to give its End of Lease Notice at least thirty (30) days but no more than one hundred eighty (180) days prior to the End of Lease Date then the Lease will automatically continue on a month to month basis. Such Lease will continue under the same terms and conditions and at the Average Rent of the immediately preceding Term until the later of the date that is thirty (30) days after the End of Lease Notice has been received by IBM Company and the date on which Lessee has satisfied all the conditions of such selected end of lease option as described herein.

**15.2 Renew the Lease**

At the end of each Term of the Lease, so long as no Default has occurred and is continuing, Lessee may elect to renew the Lease for Equipment on terms and conditions mutually agreed to between the Parties in writing. In the event Lessee provides its End of Lease Notice in accordance with Section 15.1 selecting this option, the Lease will be renewed at the end of the applicable Term on such mutually agreed to terms and conditions.

**15.3 Return the Equipment**

At the end of the Term of the Lease, Lessee may elect to return Equipment on the applicable End of Lease Date under the terms and conditions herein. If Lessee provides its End of Lease Notice in accordance with Section 15.1 selecting this option but fails to return the Equipment at the end of the Term, then Lessee shall pay Rent for such Equipment equal to the Average Rent from the End of Lease Date until the date such Equipment is received by IBM Company. If Lessee returns the Equipment on or after the End of Lease Date without providing such End of Lease Notice, then Lessee shall continue to pay Rent for such Equipment equal to the Average Rent from the End of Lease Date until the date that is thirty (30) days following the date on which the Equipment is received by IBM Company in accordance with Section 16.

**16. Equipment Return**

16.1 Upon expiration, termination or cancellation of the Lease, the exact item of Equipment (manufacturer, type/model and serial number) shall be returned to IBM Company at Lessee's expense, fully insured against risk of loss or damage, to a

location designated by IBM Company in France metropolitan. 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 IBM Company at IBM Company's designated location.

16.2 Lessee is responsible for the removal of all information and data contained within the Equipment prior to its return. IBM Company shall have no obligation or liability in respect of any such information or data.

16.3 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 IBM Company to restore the Equipment to the condition described above.

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

### **17. Equipment Purchase Request**

17.1 Provided that is has executed all its obligations under the Agreement, and so long as no Default or Event of Default has occurred and is continuing, the Lessee may ask to purchase the Equipment, at the end of each Payment Period, except during the first twelve months of the lease Term.

Concerning the Equipment it would like to purchase, the Lessee will send its request to IBM Company at least thirty (30) days prior to the end of the Payment Period. .

17.2 IBM Company will then be able to offer a sale price, which will be estimated on the date of the request, according to, among other things, the effective date of the projected sale and the market value of the Equipment. The Parties shall agree on the terms of such a sale at this date. The IBM Company can accept or reject the Lessee's offer at the IBM Company's absolute discretion. If IBM Company accepts the offer, Lessee remains responsible for any Payment obligations due up to the effective date of the sale of the Equipment and any amounts specified under the offer. Upon receipt of all such amounts, no further Rent will be payable for the Program License and/or Equipment and, with respect to any purchased Equipment, IBM Company shall transfer to Lessee without recourse or warranty of any kind, express or implied, including any warranty against interference or infringement or the like, all of IBM Company's right, title and interest in such Equipment, except that IBM Company shall warrant the Equipment is free and clear of any liens or encumbrances created by or through IBM Company. If IBM Company rejects the offer, IBM Company will notify Lessee in writing and Lessee shall return the Equipment to IBM Company within thirty (30) days of such notification.

17.3 Under no circumstances does this article constitute a promise to sell or a commitment from IBM Company or the Lessee to enter into a sale agreement for the Equipment, the sale being in any case governed by the free consent of the Parties.

### **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 under their Agreement when due and such failure continues for a period of seven (7) days after Lessee receives a formal notice to pay from IBM Company or, if under a direct debit arrangement, a direct debit entry from Lessee's specified business deposit account is refused for any reason and such failure continues for a period of seven (7) days after Lessee receives a formal notice to pay from IBM Company;
- b. Lessee fails to perform or breaches any obligation under this 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 IBM Company;
- 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 an item of Equipment or a Part, or makes an Assignment in violation of the terms of this Agreement;
- e. any guarantee of this Agreement required by and provided to IBM Company shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. Lessee or Guarantor suspends payment of its debts, or fails to pay its debts generally as they become due, or is deemed to be unable to do so; (if no payment occurs after cure period, as provided under b) of this section)
- g. Lessee or Guarantor defaults under any agreement with IBM Company or under any other Lease under this Master Agreement beyond any applicable cure period; or
- h. 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, IBM Company may:

- a. terminate the Agreement in default and any and all other Agreements with Lessee under this Master Agreement and declare all amounts then due and to become due hereunder and thereunder for each item of Equipment not returned to IBM Company by Lessee, immediately due and payable;
- b. demand the return of, or 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 and any and all proceeds of any of the foregoing, including, without limitation, payments under insurance or any indemnity or warranty relating to loss or damage to such Equipment, and remove any software and data from such Equipment without any liability for this action;
- c. pursue any remedy at law.

Should the Lessee fail to return the Product, once the Agreement is terminated, IBM Company will be entitled to invoice to the Lessee, for each day of delay, a penalty equal to the latest Rent then in force divided by the number of days of the latest Payment Period. The penalty amount will not be under any circumstances less than the Rent corresponding to one month lease.

No right or remedy is exclusive of any other provided herein or permitted by law; 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 IBM Company in enforcing the terms and conditions of this Agreement.

**20. Warranty**

For the purpose of this Section 20 a "Machine" is deemed an item of Equipment.

- 20.1 IBM Company warrants that each item of IBM Company Equipment leased under the Agreement is free from defects in materials and workmanship and conforms to its specifications. The IBM Company warranty, as described in this section, does not apply to non-IBM Company machines or equipment, for which only the warranty granted by the manufacturer is applicable, nor to used machines. The warranty period for Equipment starts on its date of installation. During the warranty period, IBM Company provides repair and exchange service for the Equipment, without charge, under the type of service that IBM Company designates for the Equipment.

If an item of Equipment does not function as warranted during the warranty period and IBM Company is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, the Lessee may return the Equipment to IBM Company. The Agreement will be terminated for this Equipment and the Lessee will be released from its obligation to pay the Rents for this Equipment.

IBM Company does not warrant uninterrupted or error-free operation of Equipment or that IBM Company will correct all defects. The warranty will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM Company in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance of the Equipment by the Lessee, removal or alteration of Equipment or parts identification labels, or failure caused by a product for which IBM Company is not responsible.

- 20.2 Description of repair or exchange services during Warranty

During the warranty period, IBM Company provides certain types of service to keep Equipment in, or restore it to, conformance with its specifications. IBM Company will inform the Lessee of the available types of service for a Machine. At its discretion, IBM Company will 1) either repair or exchange the failing Machine, and 2) provide the service either at Lessee's location or a service center. When the type of service requires that the Lessee delivers the failing Equipment to IBM Company, the Lessee agrees to ship it suitably packaged (prepaid unless IBM Company specifies otherwise) to a location that IBM Company designates.

Before any request for service, the Lessee agrees to:

- follow the problem determination, problem analysis, and service request procedures that IBM Company provides,
- secure all programs, data, and funds contained in a Machine, and
- inform IBM Company of changes in a Machine's location.

When service involves the exchange of a Machine or part, the item IBM Company replaces may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance service status of the replaced item. Before IBM Company exchanges a Machine or part, the Lessee agrees to remove all features, parts, options, alterations, and attachments not under IBM Company's service.



Some parts of IBM Company Machines are designated as Lessee Replaceable Units (called "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM Company provides CRUs to the Lessee for replacement by the Lessee. The Lessee must return all defective CRUs to IBM Company within 30 days of its receipt of the replacement CRU. The Lessee is responsible for downloading designated Machine Code updates from an IBM Company Internet Web site or from other electronic media, and following the instructions that IBM Company provides. Repair and exchange services do not cover:

- accessories, supply items, and certain parts, such as batteries, frames, and covers;
- service of Machine alterations made by the Lessee.

The terms governing the scope and requirements of IBM Company's statement of limited warranty will be provided with the IBM Company Machine and/or are available at the following URL: **www-1.ibm.com/servers/support/machine\_warranties/**

## 21. Licensed Internal Code

Certain Equipment that IBM specifies (called "Specific Machines") use licensed Internal Code ("Machine Code"). International Business Machines Corporation, one of its subsidiaries, or a third party owns the Machine Code, including all copyrights in Machine Code and all copies of Machine Code (this includes the original Machine Code, copies of the original Machine Code, and copies made from copies). Machine Code is copyrighted and is licensed under the terms of the "IBM license Agreement for Machine which is incorporated herein). By the acceptance of the term of this Agreement the Lessee acknowledges he accepts the terms of the machine code. Copies of these license agreements are available in multiple languages at the following URLs: [http://www-1.ibm.com/servers/support/machine\\_warranties/](http://www-1.ibm.com/servers/support/machine_warranties/). The license granted to the Lessee for the Machine Code expires when the Lessee is no longer the legitimate user of the Specific Machine.

## 22. Patents & Copyrights

For purposes of this Section, the term "Product" includes Machine Code.

22.1 If a third party claims that a Product IBM Company leases to the Lessee infringes that party's patent or copyright, IBM Company will defend the Lessee against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM Company, provided that the Lessee: promptly notifies IBM Company in writing of the claim; and allows IBM Company to control, and cooperates with IBM Company in, the defense and any related settlement negotiations.

22.2 If such a claim is made or appears likely to be made, the Lessee agrees to permit IBM Company to enable the Lessee to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM Company determines that none of these alternatives is reasonably available, the Lessee agrees to return the Product to IBM Company on its written request. Then, the Lessee will be released from its payment obligation of the Leasing Charges from the date the Product is returned to IBM Company. This is IBM Company's entire obligation to the Lessee regarding any claim of infringement.

22.3. Claims for which IBM Company is not responsible

IBM Company has no obligation regarding any claim based on any of the following:

- anything the Lessee provides which is incorporated into a Product;
- a modification made by the Lessee of a Product, or a software's use in other than its specified operating environment;
  - the combination, operation, or use of a Product with other products not provided by IBM Company as a system, or the combination, operation or use of a Product with any product, data, apparatus, or device that IBM Company did not provide;
- infringement by a non-IBM Company Product alone, as opposed to its combination with Products provided by IBM Company to the Lessee as a system.

## 23 General

23.1 Exclusions and Limitations

Except as otherwise provided by mandatory law:

IBM Company's liability for any damages and losses that may arise as a consequence of the performance of its obligations set forth in this Agreement is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment or defective fulfillment of such obligations, not exceeding the greater of the following:

- Five hundred thousand euros (€ 500.000,00);

- Twelve times the Average Rent applicable to the Products that have caused the damages.

The limit of liability stated above shall not apply to:

- damages for bodily injuries (including death) or damages to tangible personal property and real property for which IBM Company is legally liable; and
- payments due under Section 22 "Patents and Copyrights" above.

Under no circumstance shall IBM Company be liable for any of the following:

- damages resulting from a breach of Lessee's obligations;
- loss of profits, even when they arise as an immediate consequence of the event that generated the damages;
- Indirect damages, even when these damages could have been foreseen or IBM Company had been informed of the possibility of their possible occurrence;
- loss of, or damage to, data; and
- lost business, revenue, goodwill (including damages to reputation or public image) or anticipated savings.

The terms of the Agreement, including financial terms, were established in consideration of the present clause, which is an integral part of the general economy of the Agreement.

Pursuant article 1230 of the Civil Code, the Parties agree that this clause will remain in force with all its effects upon the expiration of the Agreement for whatever reason the Agreement resolution, including the Agreement termination.

### 23.2 Lessee Representations and Warranties

Lessee represents and warrants to IBM Company that as of the date it enters into any Agreement or any Schedule thereto:

- a. it has obtained the necessary internal and external approvals, consents and authorizations to enable it to enter into the Agreement;
- b. the Lessee's signatories to the Agreement have the authority to bind the Lessee and do so by their signature;
- c. the Agreement is a legally valid and binding obligation of Lessee, enforceable in accordance with its terms;
- d. all representations made, and any information supplied to IBM Company (including those related to its financial status, and each Product, including the prices thereof) are true, accurate and complete;
- e. there exists no material default as to any other agreement to which Lessee is a party, and no potential liability of Lessee, legal or otherwise, that might impair its ability to comply with this Agreement;
- f. Lessee is a legal entity, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and in each jurisdiction where Products will be located, with full legal and organizational power to enter into this Agreement;
- g. the execution and delivery of this Agreement by Lessee and performance of its obligations hereunder will not violate any judgment, order, law, or governmental regulation affecting Lessee or any provision of Lessee's documents or organization, nor result in a breach or default of any instrument or agreement to which Lessee is a party or to which Lessee may be bound; and
- h. Lessee has selected each Product listed in the Schedule and accepts responsibility for its use and the results obtained therefrom.

### 23.3 Security

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

### 23.4 Survival

All of Lessee's representations and warranties shall survive execution and delivery of the Agreement and commencement of any Lease under the Agreement. Lessee's obligations under the Agreement, which by their nature would continue beyond the expiration of the Agreement, shall survive the expiration or termination of the Agreement.

### 23.5 Notices

Any notice shall be in writing, signed on behalf of the Party giving it and served by delivering it in person or by courier, by prepaid first class mail, recorded delivery or registered post to the office of the other Party, as listed in IBM Company's invoice to Lessee or as otherwise agreed in writing. 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.

### 23.6 Waiver and Severability

Any failure or delay in exercising a right or remedy at law shall not constitute a waiver of that right or remedy, nor a waiver of any other rights or remedies, in or under the 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.

23.7 Benefit of Agreement (Third Party Rights)

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

23.8 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 the Agreement.

23.9 Announcements and Publicity

Neither Party will make any public announcement relating to the 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.

23.10 Accounting

Neither IBM Company, nor any other IBM Company organization or affiliate makes any representation whatsoever regarding Client's accounting treatment applicable to the Agreement. International Business Machines Corporation accounts for receivables under this Agreement as financing receivables for US reporting purposes.

23.11 Indemnity

Lessee shall indemnify and defend IBM Company 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 (specifically excluding any IBM Company Product that is properly used by Lessee for its intended purpose) that are (i) ordered to be paid by IBM Company by a court, governmental agency, or regulatory body, (ii) incurred or paid by IBM Company in connection with legal proceedings in respect of third party claims, or (iii) incurred or paid by IBM Company in connection with any settlement by IBM Company that has been consented to by Lessee. This indemnity shall not apply to Losses caused solely by the gross negligence, or willful misconduct of IBM Company. Lessee agrees that upon written demand by IBM Company, Lessee shall assume full responsibility for the defense of such claim.

23.13 Financial Statements

If not publicly available, then, upon IBM Company's request, Lessee agrees to provide IBM Company its annual audited financial statements within ninety (90) days of Lessee's fiscal year end and, if requested by IBM Company, its quarterly, unaudited financial statements, along with a certificate from Lessee'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 Lessee's fiscal quarters.

23.14 Direct Debit

When IBM Company requires or Lessee requests a direct debit arrangement, Lessee shall execute applicable documentation requested by IBM Company to effect such arrangement.

23.15 Copies

Any Schedule, any Certificate of Acceptance, and any documents related thereto may be sent to Lessee by IBM Company 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 (including dates and charges). Any such changes are void.

Any copy of Schedule, any Certificate of Acceptance, 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 (unless an original is required by law). The parties agree that documents sent by e-mail will be accepted by way of proof.

23.16 Use

Products will be used by Lessee primarily for its business purposes and not for personal, family or household purposes.

23.17 Counterparts

Any Schedule, Certificate of Acceptance, and any other 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.

23.18 Assignment

IBM Company may assign or otherwise transfer in whole or part its right, title and interest in this Agreement and the Products under this Agreement to any third party. Lessee shall not assert against any such assignee or transferee any setoff, defense or counterclaim that Lessee may have against IBM Company or any other Entity.

**23.19 IBM Company'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 IBM Company), or otherwise fails to perform any other obligation under this Agreement, IBM Company may act in Lessee's stead so as to protect IBM Company's interests, in which case Lessee shall immediately reimburse IBM Company the cost thereof.

**23.20 SNC**

The partners in name are jointly and indefinitely severally liable for the company's debts and commit to reimburse all amounts due to IBM Company. In addition, the Lessee will notify IBM Company of any change in partners or in company legal status, by written notice within a maximum period of thirty (30) days following the aforementioned change by registered letter with acknowledgement of receipt.

**23.21 EIG**

All members of the EIG, which represents the Lessee, are jointly liable for the debts of the EIG, and commit to reimburse all amounts due to IBM Company. Moreover, if a change in one of the members of the EIG occurs (change in one or more members) or in EIG's legal status, the Lessee agrees to notify the change to IBM Company by written notice within a maximum period of thirty (30) days following the aforementioned change.

**23.22 Water cooled equipment**

The identified Equipment ("Servers") may contain a water solution coolant which may be subject to regulations governing the proper handling and disposal of such coolant ("Solution"). If Lessee has leased such Servers and they are due to be returned, Lessee acknowledges and agrees that Lessee shall retain title to such Solution and is responsible for the handling and disposal of such Solution in accordance with all applicable laws and regulations. Additionally, Lessee acknowledges and agrees that prior to the return of such Servers to IBM Company, Lessee is responsible for the disposal of this Solution in accordance with applicable laws and regulations and product characteristics, at the time of such disposal. Lessee's obligations under the indemnification provisions of the Agreement include any third party claims arising in connection with the Lessee's possession, use, handling or disposal of such Solution, which obligation shall survive termination or expiration of the Lease.

**24. Data Protection****24.1 Business Contact Information**

IBM Company and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of Lessee personnel and authorized users, for example name, business telephone, address, email id's, and identification information, 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.

**24.2 Account Data**

Account Data is information, other than data and information ("Content") from all equipment and BCI, that Lessee provides to IBM Company to enable Lessee's acquisition and use of IBM Company products or that IBM Company collects using tracking technologies, such as cookies and web beacons, regarding Lessee's use of IBM Company products. IBM Company 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 Company products. The IBM Company Online Privacy Statement at <https://www.ibm.com/privacy/details/us/en/> and applicable attachments or transaction documents provides additional details.

**25. Governing Law**

This Agreement will be governed by, and construed in accordance with French law. In the event of any conflict of its interpretation or execution, the Commercial Court of Paris will be solely competent. This will also apply for summary proceedings.