

Master Finance Agreement - 07/2020

This Master Finance Agreement is made between IBM France Financement SAS ("Lender") and the Entity who signs the Schedule (the "Borrower").

Lender and Borrower (as hereinafter defined) may from time to time execute Schedules pursuant to, and incorporating the terms of, this Master Finance 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 Borrower accepts the Equipment and any Financed Items(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 Lender and Borrower;

"Amount Funded" means the amount of the Loan specified, as the "Amount Funded" on the Schedule, or, if not specified, is otherwise included in the "Total Amount Funded", as such amount may be modified by the COA;

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

"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 Lender, and signed by Borrower, denoting Borrower's acceptance of the Products and authorizing Lender to pay Supplier;

"Commencement Date" means the Acceptance Date subject to the terms in Section 6;

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

"Customer" or "Borrower" 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;

"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 France;

"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 Loan table of a Schedule;

"Event of Default" means an event of default as defined in Section 10;

"Financed Item" means any license of software, or other non-hardware item specified on the Loan table of the Schedule, which is financed by a Loan hereunder;

"Financed Product" means Equipment and/or Financed Item;

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

"IBM Company" or "Lender" means IBM France Financement SAS that signs the Schedule **"Loan"** means a loan by Lender to Borrower, the proceeds of which are either (i) paid by Lender to Supplier to finance Borrower's acquisition of the Financed Product; (ii) with Lender's prior consent, paid to Borrower as reimbursement of Borrower's payment to Supplier for the Financed Product; or (iii) retained by Lender when Borrower finances or refinances any charges or other amounts owing to Lender;

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

"Party" means either Borrower or Lender; and **"Parties"** means Borrower and Lender;

"Payment" means the amount payable as the Repayment under a Loan, and/or any other amounts payable under the Agreement;

"Payment Date" means the date in each Payment Period on which Repayments are 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 Repayment 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";

“**Repayment**” means the amount specified on the Schedule as “Repayment” and which amount consists of principal and finance charges for the Loan; and is due and payable each Payment Period specified on the Schedule;

“**Schedule**” means a document that refers to and incorporates the terms and conditions of this Master Agreement and contains the details related to the Loan that is the subject matter to that Schedule;

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

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

“**Term**” means the term of the Loan, commencing on the Commencement Date and expiring at the end of the number of months listed on the Schedule; and

“**Validity Date**” means the date specified by Lender in a Schedule as the “Validity Date”, which is the date by which the executed Schedule must be returned to Lender.

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 Product description and Repayments);
 - b. attachments or addenda to the Schedule;
 - c. the Schedule; and
 - d. this Master Agreement.
- 2.3 A member of the Borrower’s Enterprise may, upon consent of Lender, 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, 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 pay Repayments in the amounts and on the due dates specified in the Agreement, and to pay such other Payments as they may become due and payable hereunder. Without limiting any of Lender’s other rights under the Agreement, Lender 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 Lender receives a COA from Borrower.

3. Payment and Taxes

- 3.1 Repayments shall be due and payable on the Payment Date as specified by Lender. The Payment Period for a Loan shall begin on the first day of the month following the Commencement Date. Borrower will remit each Payment payable hereunder to the address specified in the invoice sent by Lender to Borrower or elsewhere as otherwise instructed by Lender 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 The Payment method will be specified in a Schedule. If direct debit is specified on the Schedule, the Borrower agrees to return to Lender, before the Commencement Date, direct debit documentation as required by Lender.
- 3.3 For any Payment not paid in full by its due date, Lessee also agrees to pay a fee in an amount equal to three quarters percent (0.75%) of the unpaid Payment for each month or any part thereof that such Payment 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”). If it is determined that any amounts received from Lessee under the Agreement in respect of interest or finance charges were in excess of the highest rate allowed by applicable law then the amount representing such excess shall be credited to Lessee’s other obligations to Lessor or, in the event such other obligations have been satisfied in full, refunded to Lessee. 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.
- 3.4 Borrower agrees that, upon the Commencement Date, Borrower’s obligations under the Agreement become irrevocable and independent of acceptance of the Financed Product, and . Borrower’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 Lender or any other third party Supplier.
- 3.5 At Lender’s discretion, following the occurrence of a Default, Payments received by Lender may be applied in the following order: first to Late Payment Fees, second to overdue Repayments, and third to other Payments.
- 3.6 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

For Financed Products not supplied by IBM, Lender 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. Annual Percentage Rate

In order to comply with the provisions of article L 313-4 of the French "*Code Monétaire et Financier*", the Lender warrants that the Loan's annual percentage rate ("TEG") is specified in the Schedule. It is determined in accordance with the method known as the "proportional rate" method by multiplying the rate applied to each period included between two payments by the number of such periods contained in a year. [UNDER DISCUSSION – MEETING ON MAY 12]

6. Loan Commencement

6.1 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. Borrower has satisfied all of the Conditions Precedent;
- d. Lender has received a duly executed Certificate of Acceptance within ten (10) days of the Acceptance Date;
- e. Lender has received a Supplier invoice; reasonably satisfactory to Lender; and
- f. no Default has occurred.

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

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

7. Liens and Charges

Borrower 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 Lender.

8. Loan Prepayment

Upon thirty (30) days prior written notice, Borrower may prepay the Loan in full by paying Lender an amount equal to all Repayments and other amounts due or to become due under the Agreement with respect to such Financed Product.

9. Assignment

Borrower may not make any Assignment of any Loan nor Agreement.

10. Events of Default

10.1 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 their Agreement when due and such failure continues for a period of seven (7) days after Borrower receives a formal notice to pay from Lender or, if under a direct debit arrangement, a direct debit entry from Borrower's specified business deposit account is refused for any reason and such failure continues for a period of seven (7) days after Borrower receives a formal notice to pay from Lender;
- b. Borrower 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 10.1) 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. Borrower makes an Assignment in violation of the terms of this Agreement;
- e. any guarantee of this Agreement required by and provided to Lender shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. Borrower 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. Borrower or Guarantor defaults under any agreement with Lender or under any Loan under this Master Agreement beyond any applicable cure period; or
- h. the opening of proceedings against the Borrower for judicial receivership (subject to receiver's consent);
- 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.
- j. decease, amicable liquidation, winding up of business or transfer of goodwill.

11. Remedies

11.1 Following the occurrence of an Event of Default, Lender may:

- a. terminate the Agreement in default and any and all other Agreements with Borrower under this Master Agreement and declare all amounts then due and to become due hereunder and thereunder, immediately due and payable;
- b. pursue any remedy at law

- 11.2 In any case of Default, the Lender shall lodge an appeal by all legal channels, pursue all remedies permitted by law and shall be entitled to automatically set off against any amounts that the Lender might owe to the Borrower (due or likely to become payable) under any other agreement between the Parties.
- 11.3. Proof of the Borrower's debt shall be constituted by the Agreement and by all of the Lender's documents and bookkeeping vouchers, notably advices of unpaid transfers.
- 11.4 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. Borrower shall pay all costs and expenses, including reasonable legal fees, costs and expenses, incurred by Lender in order to obtain collection of its debt and consolidation of its guarantees (protest charges and return of unpaid bills, various costs and fees) shall be payable by the Borrower, which is formally bound by this repayment, and this by way of damages (article 1152 of the French Civil Code).

12. General

12.1 Borrower Representations and Warranties

Borrower represents and warrants to Lender that as of the date it enters into any Agreement;

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

12.2 Security

As a condition of entering into the Agreement, 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.

12.3 Survival

All of Borrower's representations and warranties shall survive execution and delivery of the Agreement and commencement of any Lease under the Agreement. Borrower'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.

12.4 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 Lender's invoice to Borrower 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.

12.5 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.

12.6 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.

12.7 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.

12.8 Announcements and Publicity

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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.

12.9 Accounting

Neither Lender, nor any other Lender 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 U.S. reporting purposes.

12.10 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 (collectively, "Losses") arising out of or relating to this Agreement or from Borrower's possession and use of the Financed Products that are (i) ordered to be paid by Lender by a court, governmental agency, or regulatory body, (ii) incurred or paid by Lender in connection with legal proceedings in respect of third party claims, or (iii) incurred or paid by Lender in connection with any settlement by Lender that has been consented to by Borrower. This indemnity shall not apply to Losses caused solely by the gross negligence, or willful misconduct of Lender. Borrower agrees that upon written demand by Lender, Borrower shall assume full responsibility for the defense of such claim.

12.12 Personal Data required under the Anti Money Laundering Legislation

In order to fulfill its obligation under applicable Anti Money Laundering laws and regulations (AML Legislation) Lender 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 Borrower and of Borrower'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, Borrower will notify the individuals and obtain the consent of any such individuals. The IBM Privacy Statement at <https://www.ibm.com/privacy/details/us/en/provides> additional details on IBM's collection and use of personal information

12.13 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, if requested by Lender, 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.

12.14 Direct Debit

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

12.15 Copies

Any Schedule, any Certificate of Acceptance, 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 (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.

12.16 Use

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

12.17 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.

12.18 Lender Assignment

Lender may assign or otherwise transfer in whole or part its right, title and interest in this Agreement and the Financed Products under this Agreement 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 or any other Entity.

12.19 Lender's Payment

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

12.20 SNC

The partners in name are jointly and indefinitely severally liable for the company's debts and commit to reimburse all amounts due to Lender. In addition, the Borrower will notify Lender 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.

If a change in Borrower's partners or company legal status weakens its financial situation and securities, Lender can decline future drawings requested by Borrower (subsequently the aforementioned change) within the scope of multiple funding loan contracts.

12.21 **EIG**

All members of the EIG, which represents the Borrower, are jointly liable for the debts of the EIG, and commit to reimburse all amounts due to Lender. 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 Borrower agrees to notify the change to Lender by written notice within a maximum period of thirty (30) days following the aforementioned change. If a change in Borrower's members or company legal status weakens its financial situation and securities, Lender can decline future drawings requested by Borrower (subsequently the aforementioned change) within the scope of multiple funding loan contracts.

13. Data Protection**13.1** **Business Contact Information**

Lender and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of Borrower 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, Borrower will notify and obtain the consent of any such individuals.

13.2 **Account Data**

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

14. 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.