

Master Lease Agreement - 10/2019

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

IBM and Customer (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.

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.

"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 and Customer;

"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 this 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 the country where IBM is located;

"Business Partner" means an entity with whom IBM has signed an agreement to promote, market, and support certain products and services;

"Certificate of Acceptance" or "COA" means a certificate issued by IBM or in a form otherwise approved by IBM, and signed by Customer, denoting Customer's acceptance of the Products and authorizing IBM to pay Supplier;

"Commencement Date" means the date the Lease commences in accordance with Section 5;

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

"Customer" means, with respect to a Schedule, the Entity that signs the Schedule as "Customer" or as "Lessee" and that is a member of Customer's Enterprise;

"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 Customer to IBM in writing, or as otherwise agreed to by the Parties, specifying the end of Lease option selected by Customer;

"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 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 to Customer hereunder;

"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 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 Customer's obligations arising under this Agreement; **"IBM"** means IBM France SAS;

"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 of all the consecutive Payment Periods specified on the Schedule;

"Lease" means a lease of Products under this 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 Customer or IBM; and “**Parties**” means Customer and IBM;

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

“**Payment Date**” means the date 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 any other item leased under this Agreement;

“**Product Purchase Request**” means, upon Customer’s request, an offer by IBM in its sole discretion to sell to Customer an item of Equipment as set forth in Section 17, at a purchase price equal to either:

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

“**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”;

“**Supplier**” means the Entity supplying Product under a Supply Agreement, including but not limited to a Business Partner of IBM;

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

“**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;

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

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 Contract 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: Description of Product and Rent);
- b. attachments or addenda to the Schedule;
- c. the Schedule; and
- d. this Master Agreement.

2.3 A member of the Customer’s Enterprise may, upon consent of IBM, 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 This Master Agreement shall become effective upon signature by Customer and IBM of a Schedule.

2.5 This Master Agreement sets out the general terms and conditions under which, from time to time, IBM may lease Products to Customer and Customer may lease Products from IBM. For each Lease, Customer 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.

3. Payment and Taxes

- 3.1 The initial Payment Period for a Lease shall begin on the first day of the month following the Commencement Date. Customer will remit each Payment payable hereunder to the address specified in the invoice sent by IBM to Customer or elsewhere as otherwise instructed by IBM 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 Payment will be settled by direct debit unless otherwise specified in a Schedule. To this effect, the Customer agrees to return to IBM, before the Commencement Date, direct debit documentation as required by IBM.
- 3.3 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, Customer also agrees to pay IBM, in addition to the sums due and on IBM 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, Customer shall pay IBM a fixed indemnity of forty (40) euros, to cover IBM's debt collection costs. Should these costs exceed forty (40) euros, IBM shall be entitled to complementary indemnification, subject to justification of the amount claimed. This provision is without prejudice to the other measures IBM will be entitled to take in compliance with the provisions of article 19 hereinafter.
- 3.4 Customer agrees that, upon the Commencement Date, Customer's obligations under this Agreement become irrevocable. Customer'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 the Supplier or any other third party.
- 3.5 At IBM's discretion, following the occurrence of a Default, Payments received by IBM may be applied in the following order: first to Late Payment Fees, second to overdue Rent, 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

- 4.1 The scope of this Agreement being the supply and the lease of the Products, the Customer acknowledges that IBM's obligations are obligations of means. The Customer assumes the choice of the Products, and asserts that it has checked the compliance of the Products with its own needs.
- The Customer 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:
- For each Product, Customer represents that it has the right to assign to IBM, and hereby assigns to IBM, 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 to be funded.
- All other obligations as defined in the Supply Agreement between Customer and Supplier governing the acquisition of the Product shall remain with Customer. As between IBM and Customer, the rights and obligations of Customer in relation to the Product are set out exclusively in this Agreement. Nothing in this Agreement shall affect any remedies Customer may have against, or any obligations Customer may have to, the Supplier, licensor, manufacturer of the Equipment, or other third party.
- Customer 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 Customer will inform IBM of any legal proceedings beforehand.
- The Parties agree that during the Term of the Lease, so long as Customer is not in default, Customer shall have the nonexclusive benefit of any warranties for such Equipment made available to IBM under the Supply Agreement as the owner of the Equipment and that Customer is authorized to act on IBM's behalf and for IBM'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's rights in relation to the Equipment.
- For equipment, software and services not supplied by IBM, IBM 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:
- the Schedule is duly executed by Customer and received by IBM on or prior to the Validity Date and is accepted by IBM;
 - the Commencement Date occurs by the end of the Planned Commencement Month;

- c. Customer has satisfied all of the Conditions Precedent; and
- d. no Default has occurred.

If any of the foregoing conditions are not satisfied, IBM shall have no obligation or liability with respect to the Agreement or the Products, including any obligation to lease the Products. However, IBM, in its sole discretion, may commence the Lease or issue a new Schedule to Customer.

- 5.2 Provided that the conditions in Section 5.1 above have been satisfied, the Commencement Date for a Lease will be:
- For a Product delivered and to be installed by IBM, the Installation Date, or the date IBM makes the Product available for later installation by IBM if the Customer postpones its installation;
 - For a customer-set-up Product delivered by IBM and installed by Customer, five (5) days after the shipment date of such Equipment, unless Customer notifies IBM in writing that it has not accepted the Equipment within ten (10) days of receipt thereof by Customer;
 - For a Product supplied by a third party (e.g. IBM Business Partner), it is the date Customer accepted the Product on a duly executed Certificate of Acceptance, provided that such Certificate of Acceptance is returned to IBM within ten (10) days after the date specified on the Certificate of Acceptance as the acceptance date, unless otherwise agreed by IBM.
- 5.3 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 is the owner of the Equipment and Customer shall have no right, title or interest therein except as specified in this Agreement. Except for any purchase from IBM during the Term of the Lease or at the end of the Term, if, for any reason Customer 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 Customer shall be deemed to have transferred such title to IBM 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. Customer agrees to take such further actions at its expenses as may be required to protect IBM's ownership against claims arising directly or indirectly from Customer'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 Customer's goodwill, the Customer shall make all necessary arrangements so that the Products are not assigned nor included in the pledge, and IBM's rights on the Products are brought in time to assignor or lien holder's attention.

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

For any software installed on the Equipment, Customer 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 Customer. Such software license shall not be affected by or subject to the Lease and, with respect to the software license, IBM shall have no rights or obligations thereunder. Such software shall not be included with any Equipment returned to IBM 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 covenants to Customer that IBM 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 Customer'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 Customer 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.

9. Inspection and Marking

- 9.1 Customer shall permit IBM, upon prior notice, to inspect any Equipment, Parts, and maintenance records during Customer's normal business hours and subject to Customer's normal security procedures. Upon IBM's reasonable request, Customer will immediately affix identifying labels, plates or tags to the Equipment or Part(s) identifying IBM as the owner of such item(s).

10. Maintenance and Use

- 10.1 Customer shall keep each item of Equipment in good condition and working order, ordinary wear and tear excepted, and shall operate it safely at a Customer owned or leased business location, unless otherwise approved by IBM, 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, Customer agrees to comply with the terms of the software license and this Agreement.
- 10.2 If required of the owner of the Equipment by the Equipment manufacturer, IBM agrees to (i) allow installation of any changes, additions, and/or capacity monitoring hardware or software on the Equipment, or permit manufacturer to monitor Equipment capacity; and (ii) comply with any other terms between Customer and Equipment manufacturer, including, but not limited to, those that relate to Equipment capacity.

11. Insurance

- 11.1 Customer shall be responsible for loss or damage to the Equipment and to carry primary property damage insurance covering the Equipment naming IBM and any assignee as an additional insured as their interest may appear and granting IBM 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 at its designated return location, Customer 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. Customer shall furnish to IBM, upon request, evidence that such insurance coverage is in effect. The occurrence of such loss or damage shall not relieve Customer of any obligations hereunder. If there is loss or damage to, or theft of Equipment, Customer will immediately notify IBM and either:
- a. within five Business Days of such occurrence, repair or replace the Equipment at Customer's expense, passing to IBM 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, 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 residual value of such Product at the end of the Lease, as determined by IBM. Thereafter the portion of the Lease with respect to such Equipment shall be terminated and Customer shall owe no further Rent with respect to such Equipment.

12. Alterations

- 12.1 Customer may only modify or alter Equipment subject to the following provisions:
- a. any Parts owned by IBM that are removed as a result of an Alteration shall remain IBM's property and shall not be disposed of, exchanged, transferred or sold by Customer without IBM'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 Customer leases an upgrade with IBM, IBM 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) 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, Customer shall remove any Alterations not owned by IBM and restore the Equipment to its original condition using any removed IBM owned Part(s);
 - d. if the Alteration is not removed or Equipment is returned other than in its original condition using any removed IBM owned Part(s), then Customer agrees to pay to IBM, 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, 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 that are not removed before return of the Equipment to IBM shall become IBM's property, without charge, free and clear of all liens and encumbrances.

13. Leases for Alterations

- 13.1 Upon Customer's request, IBM 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 Customer'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 Customer is not in Default, then Customer may relocate Products to another of its business locations in the same country provided such Customer gives IBM prior written notice and remains the end user of the Products. Notwithstanding the foregoing, Customer may relocate Equipment that is either a laptop or a mobile personal device without such notice to IBM 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

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

14.3 Customer Expenses and Responsibilities

IBM reserves the right to recover reasonable administrative fees and expenses related to any Assignment, sublease or relocation. Customer 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. Customer is responsible for arranging any relocation and for ensuring compliance with all regulatory conditions for import or export of any Products. Customer 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 Customer's responsibility to obtain all necessary approvals. Customer agrees that any Schedule under this Master Agreement shall be binding upon Customer'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 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, or for certain end uses or end users.

15. End of Lease Options

15.1 At the end of the Term of the Lease, Customer may select one of the options listed below or as detailed in the Schedule by providing IBM an End of Lease Notice. If Customer 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 and the date on which Customer 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, Customer may elect to renew the Lease for Equipment on terms and conditions mutually agreed to between the Parties in writing. In the event Customer 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, Customer may elect to return Equipment on the applicable End of Lease Date under the terms and conditions herein. If Customer 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 Customer 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. If Customer returns the Equipment on or after the End of Lease Date without providing such End of Lease Notice, then Customer 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 in accordance with Section 16.

16. Equipment Return

Upon expiration, termination or cancellation of the Lease, the exact item of Equipment (manufacturer, type/model and serial number) shall be returned to IBM at Customer's expense, fully insured against risk of loss or damage, to a location designated by IBM in France metropolitan. Customer shall be responsible for deinstallation, packing, and return of the Equipment and any associated costs. Risk of loss or damage remains with Customer until receipt of Equipment by IBM at IBM's designated location.

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

The Equipment shall be complete and in such condition as will qualify the Equipment for the manufacturer's maintenance agreement service, if available, or, if not available, then in good condition and working order (ordinary wear and tear

excepted). Customer agrees to pay all costs and expenses incurred by IBM to restore the Equipment to the condition described above.

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

17. Product Purchase Request

17.1 Provided that it has executed all its obligations under the Agreement, the Customer may ask to purchase the Products, at the end of each Payment Period, except during the first twelve months of the lease term.

Concerning the Products it would like to purchase, the Customer will send its request to IBM with thirty days prior notice.

17.2 IBM 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 Products. The parties shall agree on the terms of such a sale at this date.

17.3 Under no circumstances does this article constitute a promise to sell or a commitment from IBM or the Customer to enter into a sale agreement for the Products, 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 Customer:

- a. Customer fails to pay in full any amount under this Agreement when due and such failure continues for a period of seven (7) days;
- b. Customer 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 Customer receives written notice thereof from IBM;
- c. any information provided, or representation made, by or on behalf of Customer or any Guarantor is inaccurate, false, or misleading in any material respect;
- d. Customer 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 shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. Customer 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. Customer or Guarantor defaults under any agreement with IBM 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, Customer, unless such person, entity or group owned a majority interest in or had the ability to control Customer as of the Commencement Date.

19. Remedies

19.1 Following the occurrence of an Event of Default, IBM may:

- a. terminate this Agreement and any and all other Agreements with Customer 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 by Customer, 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 Customer fail to return the Product, once the Agreement is terminated, IBM will be entitled to invoice to the Customer, 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. Customer shall pay all costs and expenses, including reasonable legal fees, costs and expenses, incurred by IBM 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 warrants that each item of IBM Equipment leased under the Agreement is free from defects in materials and workmanship and conforms to its specifications. The IBM warranty, as described in this section, does not apply to non-IBM 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 provides repair and exchange service for the Equipment, without charge, under the type of service that IBM designates for the Equipment.

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

IBM does not warrant uninterrupted or error-free operation of Equipment or that IBM 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 in writing), accident, modification, unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance of the Equipment by the Customer, removal or alteration of Equipment or parts identification labels, or failure caused by a product for which IBM is not responsible.

20.2 Description of repair or exchange services during Warranty

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

Before any request for service, the Customer agrees to:

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

When service involves the exchange of a Machine or part, the item IBM 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 exchanges a Machine or part, the Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service.

Some parts of IBM Machines are designated as Customer Replaceable Units (called "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to the Customer for replacement by the Customer. The Customer must return all defective CRUs to IBM within 30 days of its receipt of the replacement CRU. The Customer is responsible for downloading designated Machine Code updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM 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 Customer.

The terms governing the scope and requirements of IBM's statement of limited warranty will be provided with the IBM 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 customer 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/. The license granted to the Customer for the Machine Code expires when the Customer 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 leases to the Customer infringes that party's patent or copyright, IBM will defend the Customer 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, provided that the Customer: promptly notifies IBM in writing of the claim; and allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations.
- 22.2 If such a claim is made or appears likely to be made, the Customer agrees to permit IBM to enable the Customer to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Customer agrees to return the Product to IBM on its written request. Then, the Customer will be released from its payment obligation of the Leasing Charges from the date the Product is returned to IBM. This is IBM's entire obligation to the Customer regarding any claim of infringement.

22.3. Claims for which IBM is not responsible

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

- anything the Customer provides which is incorporated into a Product;
- a modification made by the Customer 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 as a system, or the combination, operation or use of a Product with any product, data, apparatus, or device that IBM did not provide;
- infringement by a non-IBM Product alone, as opposed to its combination with Products provided by IBM to the Customer as a system.

23 General

23.1 Exclusions and Limitations

Except as otherwise provided by mandatory law:

IBM'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 is legally liable; and
- payments due under Section 22 "Patents and Copyrights" above.

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

- damages resulting from a breach of Customer'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 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

23.2 Customer Representations and Warranties

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

- a. it has obtained the necessary internal and external approvals, consents and authorizations to enable it to enter into this Agreement;
- b. the Customer's signatories to this Agreement have the authority to bind the Customer and do so by their signature;
- c. this Agreement is a legally valid and binding obligation of Customer, enforceable in accordance with its terms;

- d. all representations made, and any information supplied to IBM (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 Customer is a party, and no potential liability of Customer, legal or otherwise, that might impair its ability to comply with this Agreement;
- f. Customer 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 Customer and performance of its obligations hereunder will not violate any judgment, order, law, or governmental regulation affecting Customer or any provision of Customer's documents or organization, nor result in a breach or default of any instrument or agreement to which Customer is a party or to which Customer may be bound; and
- h. Customer 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 this Agreement, IBM may require security with respect to Customer's obligations as specified in the Schedule, which security must be in form and substance acceptable to IBM. As it relates to any security deposit, IBM may apply such deposit against any payment default or hold it until all of Customer's obligations hereunder are satisfied.

23.4 Survival

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

23.7 Benefit of Agreement (Third Party Rights)

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

23.9 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.

23.10 Accounting

Neither IBM, nor any other IBM 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

Customer shall indemnify and defend IBM 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 Customer's possession and use of the Products (specifically excluding any IBM Product that is properly used by Customer for its intended purpose) that are (i) ordered to be paid by IBM by a court, governmental agency, or regulatory body, (ii) incurred or paid by IBM in connection with legal proceedings in respect of third party claims, or (iii) incurred or paid by

IBM in connection with any settlement by IBM that has been consented to by Customer. This indemnity shall not apply to Losses caused solely by the gross negligence, or willful misconduct of IBM. Customer agrees that upon written demand by IBM, Customer shall assume full responsibility for the defense of such claim.

23.12 Business Contact Information.

For the purposes of this Section 20.12, the following additional definitions shall apply:

(1) "Business Contact Information" means business-related contact information disclosed by Customer to IBM, including names, job titles, business addresses, telephone numbers and email addresses of Customer's employees and contractors.

(2) "IBM Group" means International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective 'Business Partners' and subcontractors. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

Customer authorizes IBM to process and use Business Contact Information for the purpose of furthering the business relationship between Customer and IBM Group, including the marketing of products and services (the "Specified Purpose"). Customer represents that it has obtained (or will obtain) such consents from and has issued (or will issue) Such notices to, Business Contact personnel in order to enable IBM to process and use the Business Contact Information. IBM agrees that all Business Contact Information will be processed and used in accordance with the Specified Purpose.

Customer consents to IBM transferring Business Contact Information outside the European Economic Area, provided that any such transfer is made on contractual terms approved by the CNIL (Commission Nationale de l'Informatique et des Libertés).

23.13 Financial Statements

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

23.14 Direct Debit

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

23.15 Copies

This Master Agreement, any Schedule, any Certificate of Acceptance, and any documents related thereto may be sent to Customer by IBM in soft copy format, such as a PDF file. Where Customer has printed any such document for signature from such soft copy format, Customer represents and warrants that no changes have been made to the text (including dates and charges). Any such changes are void.

Any copy of this Master Agreement, any 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 Customer 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 IBM Assignment

IBM 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. Customer shall not assert against any such assignee or transferee any setoff, defense or counterclaim that Customer may have against IBM or any other Entity.

23.19 IBM's Payment

If Customer 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), or otherwise fails to perform any other obligation under this Agreement, IBM may act in Customer's stead so as to protect IBM's interests, in which case Customer shall immediately reimburse IBM 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. In addition, the Customer will notify IFF 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 Customer, are jointly liable for the debts of the EIG, and commit to reimburse all amounts due to IBM. 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 Customer agrees to notify the change to IBM by written notice within a maximum period of thirty (30) days following the aforementioned change.

23.22 Watercooling

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 Customer has leased such Servers and they are due to be returned, Customer acknowledges and agrees that Customer 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, Customer acknowledges and agrees that prior to the return of such Servers to Lessor, Customer is responsible for the disposal of this Solution in accordance with applicable laws and regulations and product characteristics, at the time of such disposal. Customer's obligations under the indemnification provisions of the Agreement include any third party claims arising in connection with the Customer'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 and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of Customer 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, Customer 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 Customer provides to IBM to enable Customer's acquisition and use of IBM products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Customer's use of IBM products. IBM and its affiliates, its contractors and subprocessors may use Account Data for example, to enable product features, administer use, personalize experience, and otherwise support or improve use of IBM products. The IBM Online Privacy Statement at <https://www.ibm.com/privacy/details/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.