

## Finance Terms and Conditions - 04/2018

The Schedule (as defined below) between Lender and Borrower (as defined below) is subject to the following terms and conditions for Loan (as defined below) detailed herein ("Terms and Conditions"):

- 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, these Terms and Conditions.
  - "Agreement"** means, with respect to a Schedule, the Schedule executed by the Parties as such Schedule incorporates these Terms and Conditions, and as each may be amended or modified from time to time in writing by Lender and Borrower;
  - "Amount Funded"** means the amount 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 this Agreement from one Entity to another;
  - "Borrower"** means, with respect to a Schedule, the Entity that signs the Schedule as Customer
  - "Business Day"** means any calendar day, on which an authorized trader supplies service to the public in most of the businesses related to banking, including activities in foreign currency, in the country where Lender is located;
  - "Certificate of Acceptance"** means a certificate issued by Lender or in a form otherwise approved by Lender, and signed by Borrower, denoting Borrower's acceptance of the Products and authorizing Lender to pay Supplier;
  - "Commencement Date"** means the date the Loan commences in accordance with Section 4.1;
  - "Conditions Precedent"** means, with respect to a Schedule, all statements, certificates, documents, instruments, and additional terms and conditions required by Lender under these Terms and Conditions and the Schedule to be provided or satisfied on or prior to the Commencement Date;
  - "Default"** means an Event of Default or any event that upon notice or lapse of time or both would constitute an Event of Default;
  - "Enterprise"** means any Entity and the subsidiaries it owns by more than fifty percent (50%). The term "Enterprise" applies only to the portion of the Enterprise located in the country where the Lender is located;
  - "Entity"** means any 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 9;
  - "Financed Product"** means any product, service, or other item specified on the Loan table of the Schedule, which is financed by a Loan hereunder;
  - "Guarantor"** means an Entity providing a guarantee of Borrower's obligations arising under this Agreement;
  - "IBM"** means a member company of the Enterprise of International Business Machines Corporation;
  - "Lender"** means IBM ISRAEL LTD;
  - "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; or (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 a Financed Product is financed directly with Lender;
  - "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 this Agreement;
  - "Payment Date"** means the date 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 Payment 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, Financed Products and Program Licenses;
  - "Program License"** means a license of software that is specified on the Loan table of a Schedule;

**“Repayment”** means the amount specified on the Schedule as “Repayment”, 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 these Terms and Conditions and contains the details of the Loan that is the subject matter to that Schedule, including a frame Subdual for multiple loan transactions, as applicable;

**“Supplier”** means the Entity supplying Product 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 applicable Commencement Date and expiring at the end of the last Payment Period; 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 these Terms and Conditions, 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.

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. a COA (solely with respect to Equipment Model, Repayments and/or Amount Funded);
- b. attachments or addenda to the Schedule;
- c. the Schedule;
- d. attachments or addenda to these Terms and Conditions; and
- e. these Terms and Conditions.

2.3 Borrower may, upon consent of Lender, enter into Schedules incorporating the terms and conditions set out in these Terms and Conditions. Each Schedule shall constitute a separate loan agreement between the Parties thereto.

2.4 No term of the Agreement may be amended, changed, modified or waived, except in writing signed by the Parties to the Agreement.

2.5 The termination or version update of these Terms and Conditions shall have no effect upon any Schedule executed by Lender and Borrower prior to the date of termination of Terms and Conditions.

2.6 For each Loan, Borrower agrees to pay Repayments in the amounts and on the due dates specified in this Agreement, and to pay such other Payments as they may become due and payable hereunder. Without limiting any of Lender’s other rights under the Agreement, Lender reserves the right to reject any 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 For any Payment not paid in full by its due date, Borrower also agrees to pay a fee in an amount equal to one percent (1%) 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 Borrower under this 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 Borrower’s other obligations to Lender or, in the event such other obligations have been satisfied in full, refunded to Borrower.

3.3 Borrower agrees that, upon the Commencement Date, Borrower’s obligations under this Agreement become irrevocable and independent of acceptance of the 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 the Supplier or any other third party.

3.4 At Lender’s discretion, following the occurrence of a Default, Payments received by Lender will be applied in the following order: first to Late Payment Fees, second to overdue Repayments, and third to other Payments.

3.5 Borrower is responsible for any taxes and charges arising in respect of any Loan, and/or any Financed Product, except for Lender’s corporate income tax. “Taxes” shall include, but is not limited to, value added taxes, gross sales taxes, personal property taxes, sales taxes, use taxes, and all other indirect taxes of any nature, as applicable.

## **4. Loan Commencement**

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

- a. the Schedule is duly executed by Borrower and received by Lender on or prior to the Validity Date and is accepted by Lender;
- b. the Commencement Date occurs by the end of the Planned Commencement Month;
- c. for Products supplied directly by IBM, Lender's receipt of an IBM invoice containing the Products listed on the Schedule or, for any other Product, a Certificate of Acceptance duly executed by Borrower;
- d. Lender has satisfied all of the Conditions Precedent; and
- e. 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. However, Lender, in its sole discretion, may commence the Loan or issue a new Schedule to Borrower.

Provided that the conditions in this Section have been satisfied, the Commencement Date for a Loan will be the date Lender pays the Supplier or Borrower or otherwise funds the Loan as agreed to in writing by the Parties.

## **5. Ownership**

- 5.1 Borrower is the owner of any hardware Financed Products and the licensee of any Program License.

## **6. Liens and Charges**

- 6.1 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.

## **7. Loan Prepayment**

- 7.1 Upon one (1) month prior written notice, Borrower may repay a Loan by paying all amounts then due and owing plus the sum of the remaining Periodic Payment Amounts as of the requested prepayment date.

## **8. Assignment**

- 8.1 Borrower may not make any Assignment of any Loan.

## **9. Events of Default**

- 9.1 If any of the following events occur it shall be an "Event of Default" by Borrower:
  - a. Borrower fails to pay in full any amount under this Agreement when due and such failure continues for a period of seven days;
  - b. Borrower fails to perform or breaches any obligation under this Agreement (to the extent not otherwise an Event of Default under any of the other provisions in this Section 9.1) and such non-performance or breach continues for a period of fifteen (15) days after Borrower receives written notice thereof from Lender;
  - c. any information provided, or representation made, by or on behalf of Borrower or any Guarantor is inaccurate, false, or misleading in any material respect;
  - d. any guarantee of 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;
  - e. (i) any petition or proceeding is filed by or against Borrower or any Guarantor under any bankruptcy, liquidation, insolvency, receivership or similar law, and, if such petition or proceeding is filed against Borrower or Guarantor, is not dismissed within sixty (60) days after such filing, or (ii) Borrower or any Guarantor admits in writing its insolvency or inability to pay its debts as they come due;
  - f. Borrower or Guarantor becomes insolvent, or suspends or threatens to suspend payment of its debts, or fails to pay its debts generally as they become due, or is deemed to be unable to do so;
  - g. Borrower or Guarantor takes any action in connection with its dissolution, liquidation or the winding up of its affairs, including, without limitation, the commencement of any proceeding therefor, ceases doing business as a going concern, or sells or disposes of substantially all its assets or makes a bulk transfer of its assets, or makes an assignment for the benefit of creditors;
  - h. Borrower or Guarantor defaults under any agreement with Lender or under any other loan agreement beyond any applicable cure period; or
  - i. any person, entity or group acquires a majority interest in, or the ability to control, Borrower, unless such person, entity or group owned a majority interest in or had the ability to control Borrower as of the Commencement Date.

## **10. Remedies**

- 10.1 Following the occurrence of an Event of Default, Lender may:
  - a. terminate this Agreement and any and all other agreements with Borrower and declare all amounts then due and to become due hereunder and thereunder, immediately due and payable (including Late Payment Fee from the date the amount became due and payable to the date of the actual payment thereof – prior to a judgment, and also thereafter); provided, however, that following the occurrence of an Event of Default pursuant to Section 9.1(f), this Agreement and any and all other agreements with Borrower shall automatically terminate and all amounts then due and to become due shall automatically become immediately due and payable (including Late Payment Fee from the

date the amount became due and payable to the date of the actual payment thereof – prior to a judgment, and also thereafter);

- b. demand the return of, or take or recover immediate possession of each item of Financed Product and all additions, attachments, accessories, accessions and upgrades thereto and any and all substitutions, replacements or exchanges for any such Financed Product 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 Financed Product, and remove any software and data from any Equipment included in Financed Product without any liability for this action;
- c. require Borrower to terminate use of any Program License or any software license constituting a Financed Product, or request Licensor to terminate Borrower's right to use such licenses; and
- d. pursue any remedy at law or the Agreement (including without limitation exercise the securities and/or realization of assets which were pledged).

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 enforcing the terms and conditions of this Agreement.

## **11. General**

### **11.1 Exclusions**

Except with respect to Section 11.11 Indemnity, in no event shall either Party have any liability for, nor shall Borrower have any remedy against Lender for, indirect or consequential damages, any loss of profits, business, revenue or anticipated savings, loss of use, or any other commercial loss. The foregoing does not limit, amend, modify or alter Borrower's obligations to pay Repayments, taxes or any other payment obligations (including without limitation, Borrower's indemnity obligations) under this Agreement. The limitation of liability in this Section shall in no way affect Borrower's rights under the Supply Agreement against Supplier or the manufacturer of the Equipment. The foregoing shall not exclude any liability in respect of death or personal injury resulting from the negligence of either Party, its employees or agents. Lender shall not be liable for any claim, damage or loss arising from the Products. Under no circumstances shall Lender be liable for loss of, or damage to, Borrower's records or data.

### **11.2 Borrower Representations and Warranties**

Borrower represents and warrants to Lender that as of the date it enters into this Agreement and as of each Commencement Date under this Agreement:

- a. it has obtained the necessary internal and external approvals, consents and authorizations to enable it to enter into this Agreement;
- b. the Borrower's signatories to this Agreement have the authority to bind the Borrower and do so by its signature;
- c. this 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 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 Equipment and/or Program Licenses 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;
- i. Borrower has selected each Product listed in the Schedule and accepts responsibility for its use and the results obtained therefrom; and
- j. Borrower represent and warrant that the terms of the Agreement supersede any conflicting terms under a Supply Agreement.

### 11.3 Security

As a condition of entering into this 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.

### 11.4 Survival

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

### 11.5 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 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.

### 11.6 Waiver and Severability

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

### 11.7 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.

### 11.8 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.

### 11.9 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.

### 11.10 Accounting

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

### 11.11 Indemnity

Borrower shall indemnify and defend Lender in full against any losses, claims, settlement payments, interest, awards, judgments, damages (including consequential or special damages), fines, fees (including reasonable legal fees and disbursements), expenses and penalties (collectively, "Losses") arising out of or relating to this Agreement or from Borrower's possession and use of the 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.

### 11.12 Business Contact Information

Borrower agrees that IBM and its affiliates, and their contractors and subprocessors may store and otherwise process the business contact information of Borrower's personnel and authorized users and information about Borrower as a legal entity ("BCI") in connection with this Agreement and in connection with IBM's products and services or in furtherance of IBM's business relationship with Borrower, wherever they do business, for example name, business telephone, address, email id's, and identification information. Where notice to or consent by the individuals is required for such processing, Borrower will notify and obtain the consent of any such individuals.

### 11.13 Intentionally omitted.

### 11.14 Intentionally omitted.

### 11.15 Copies

These Terms and Conditions, 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 these Terms and Conditions, 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.

11.16 Use

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

11.17 Counterparts

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

11.18 Lender Assignment

Lender may assign or otherwise transfer in whole or part its right, title and interest in this Agreement and the Equipment and/or Program License 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.

11.19 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.

11.20 Intentionally omitted.

11.21 Administrative Services Fee

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

11.22 Account Data

Account Data is information, other than data and information ("Content") from all equipment and BCI, that Borrower provides to IBM to enable Borrower's acquisition and use of IBM products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Borrower'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/il/he>, and applicable Attachments or TDs provides additional details.

12. Governing Law

12.1 This Agreement will be governed by, and construed in accordance with the laws of the country where the Lender listed on the Schedule is registered and the Parties submit to the jurisdiction of the courts of Tel-Aviv-Jaffa located in such country.