

**Master Combined Regulated Lease and Loan Agreement - 10/2019**

This Master Combined Regulated Lease and Loan Agreement is made between IBM France Financement ("IFF") and the Entity who signs the Schedule ("Customer").

IFF and Customer may from time to time execute Schedules pursuant to, and incorporating the terms of, this Master Combined Regulated Lease and Loan Agreement ("Master Agreement") and such other terms and conditions as the Parties may agree to.

For the purpose of this Master Combined Regulated Lease and Loan Agreement, a "Schedule" means a document that refers to and incorporates the terms and conditions of this Master Combined Regulated Lease and Loan Agreement and contains the respective details of the Lease and the Loan that is the subject matter to that Schedule. The terms of the Master Combined Regulated Lease and Loan Agreement shall prevail over the terms of its two Attachments.

**1. Preamble**

Customer wishes to finance all or part of an IT project through IFF.

In order to meet Customer's request, IFF has agreed to propose a specific and tailored financing to Customer. This financing is based on the following:

- 1) A Lease of Equipment (as defined in Attachment 1); and
- 2) A Loan for financing the acquisition of products such as equipment, software licenses and the performance of services (as defined in Attachment 2).

The purpose of this Master Agreement is to define the provisions under which IFF will lease the Equipment to Customer and lend money to Customer through a Loan, and Customer will pay charges to IFF respectively for the Lease and Loan.

**2. Structure of this Master Combined Regulated Lease and Loan****2.1 Leasing of Equipment**

The Lease of Equipment is subject to the terms and conditions of the Master Regulated Lease Agreement attached in Attachment 1 of this Master Agreement.

For the purpose of the Lease of Equipment, Customer will be referred to as the "Lessee" or "Customer" and IFF will be referred to as the "Lessor" or "IFF" in the Master Regulated Lease Agreement attached in Attachment 1 and/or any Schedules.

**2.2 Loan**

The Loan proposed to the Customer is subject to the terms and conditions of the Master Finance Agreement attached in Attachment 2 of this Master Agreement.

For the purpose of the Loan, Customer will be referred to as the "Borrower" or "Customer" and IFF will be referred to as the "Lender" or "IFF" in the Master Finance Agreement attached in Attachment 2 and/or any Schedules.

**2.3 Strict separation**

In no event the provisions applicable to the Lease can apply to the Loan, and vice versa.

**3. Effective Date**

An "Agreement" hereunder shall consist of this Master Combined Regulated Lease and Loan Agreement, its two Attachments hereunder, the Schedule, and their applicable addenda represent 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 Lease and Loan is effective when the Schedule containing such Lease and Loan details is executed by the Parties thereto.

**ATTACHMENT 1: MASTER REGULATED LEASE AGREEMENT****Master Regulated Lease Agreement - 10/2019**

This Master Regulated Lease Agreement is made between IBM France Financement – SAS (“Lessor” or “IFF”) and the Entity who signs the Schedule (the “Lessee”).

Lessor and Lessee (as hereinafter defined) may from time to time execute Schedules pursuant to, and incorporating the terms of, this Master Regulated 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 Lessor and Lessee;

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

“**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;

“**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 Lessor 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 Lessor or in a form otherwise approved by Lessor, and signed by Lessee, denoting Lessee’s acceptance of the Products and authorizing Lessor to pay Supplier;

“**Commencement Date**” means the date the Lease commences in accordance with Section 5;

“**Conditions Precedent**” means, with respect to a Schedule, all statements, certificates, documents, instruments, and additional terms and conditions required by Lessor under this Master Agreement 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;

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

“**End of Lease Notice**” means the notice delivered by Lessee to Lessor in writing, or as otherwise agreed to by the Parties, specifying the end of Lease option selected by Lessee;

“**End of Lease Purchase Option**” means an option for Lessee to purchase an item of Equipment at the end of the Term at a purchase price which shall be determined as indicated under Section 16;

“**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 Lessor 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 Lessor to Lessee 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 Lessor to be the amount that would be realized for the same equipment qualified for manufacturer’s

maintenance in an arm's length sale between a willing buyer and a willing seller, under no compulsion by either party to perform the sale;

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

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

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

**"Initial Term"** means, with respect to Products, the initial term of the Lease for such item, commencing on the applicable Commencement Date and expiring at the end of the Initial Payment Term;

**"Lease"** means a lease of Products under this Agreement as specified on the Lease table on the Schedule and as regulated under articles L. 313-7 à L. 313-11 of the French Monetary and Financial Code for the regulated lease;

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

**"Part"** means any original component or element of Equipment or any replacement to such original component or element provided under warranty or maintenance service or in connection with an Alteration;

**"Party"** means either Lessee or Lessor; and **"Parties"** means Lessee and Lessor;

**"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;

**"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 Lessee 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 Regulated 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 Lessor in a Schedule as the "Validity Date", which is the date by which the executed Schedule must be returned to Lessor.

## **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 Lease is effective when the Schedule containing such Lease is executed by the Parties thereto.

2.2 If there is a conflict of terms among the documents, the order of precedence will be as follows (from highest to lowest priority):

- a. the COA (solely with respect to: Equipment Model and Rent);
- b. attachments or addenda to the Schedule;

- c. the Schedule; and
- d. this Master Agreement.

- 2.3 A member of the Lessee's Enterprise may, upon consent of Lessor, 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 sets out the general terms and conditions under which, from time to time, Lessor may lease Products to Lessee and Lessee may lease Products from Lessor. For each Lease, Lessee agrees to pay Rent in the amounts and on the due dates specified hereunder, and to pay such other Payments as they may become due and payable hereunder. Without limiting any of Lessor's other rights under the Agreement, Lessor 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 Lessor receives a COA from Lessee.

### **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. Lessee will remit each Payment payable hereunder to the address specified in the invoice sent by Lessor to Lessee or elsewhere as otherwise instructed by Lessor 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 Lessee agrees to return to Lessor, before the Commencement Date, direct debit documentation as required by Lessor.
- 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, Lessee also agrees to pay Lessor, in addition to the sums due and on Lessor request, a late payment fee calculated by applying the European Central Bank rate for its most recent refinancing operation plus ten (10) points, from the due date until payment is effectively and entirely made (the "Late Payment Fee"). In case of late payment, Lessee shall pay Lessor a fixed indemnity of forty (40) euros, to cover Lessor's debt collection costs. Should these costs exceed forty (40) euros, Lessor shall be entitled to complementary indemnification, subject to justification of the amount claimed. This provision is without prejudice to the other measures Lessor will be entitled to take in compliance with the provisions of article 19 hereinafter.
- 3.4 Lessee agrees that, upon the Commencement Date, Lessee's obligations under this Agreement become irrevocable and independent of acceptance of the Product. Lessee's obligation to make all Payments in full when due, becomes absolute and unconditional, without set off, counterclaim, withholding, deduction, abatement, recoupment, or defense of any kind, and irrespective of errors or deficiencies in or the performance or the quality of the Product, or the performance by the Supplier or any other third party.
- Furthermore, it is expressly agreed, by exception to article 1724 of the French Civil Code, that Lessee will not have the right to claim any reduction of the Rent even if a Product is out of service for more than forty (40) days.
- If following a court decision a Schedule is terminated as a result of the termination or cancellation of the Supply Agreement, the Lessee will remain liable for the prompt payment of the applicable Rent until the effective date of such termination, and will thereafter pay an indemnity which will be the aggregate of the Rent remaining to be invoiced until the end of the Initial Term, minus any sums received by Lessor from the Supplier as reimbursement of the price of the Products. Lessee shall not, in any case, postpone the payment of the termination indemnity until the price is reimbursed by Supplier, the Lessor committing to remit to the Lessee such reimbursement as soon as it will obtain it.
- 3.5 At Lessor's discretion, following the occurrence of a Default, Payments received by Lessor 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. Lessee will pay any rights, taxes, and fees, present or future, applicable to the Agreement and its enforcement pursuant to laws and regulations in force.

### **4. Supplier**

- 4.1 The Lessee assumes the choice of the Products, and asserts that it has checked the compliance of the Products with its own needs.
- The Lessee states that it orders the Products for its own needs, and not in order to resale them, directly or indirectly, and create, because of this, a market channel for the Products.
- Considering the scope of this Agreement and the activity of Lessor, the latter should not be considered as professional vendor of the Products.

4.2 For each Product, Lessee represents that it has the right to assign to Lessor, and hereby assigns to Lessor, 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 Lessor to be funded. All other obligations as defined in the Supply Agreement between Lessee and Supplier governing the acquisition of the Product shall remain with Lessee. As between Lessor and Lessee, the rights and obligations of Lessee in relation to the Product are set out exclusively in this Agreement. Nothing in this Agreement shall affect any remedies Lessee may have against, or any obligations Lessee may have to, the Supplier, licensor, manufacturer of the Equipment, or other third party.

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

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

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

## **5. Lease Commencement**

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

- a. the Schedule is duly executed by Lessee and received by Lessor on or prior to the Validity Date and is accepted by Lessor;
- b. the Commencement Date occurs by the end of the Planned Commencement Month;
- c. Lessor receives a Supplier invoice reasonably satisfactory to Lessor (e.g. amount, equipment);
- d. Lessee has satisfied all of the Conditions Precedent; and
- e. no Default has occurred.

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

5.2 Provided that the conditions in Section 5.1 above have been satisfied, the Commencement Date for a Lease will be the date Lessee accepted the Product on a duly executed Certificate of Acceptance, provided that such Certificate of Acceptance is returned to Lessor within ten (10) days after the date specified on the Certificate of Acceptance as the acceptance date, unless otherwise agreed by Lessor.

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**

Lessor is the owner of the Equipment and Lessee shall have no right, title or interest therein except as specified in this Agreement. Except for any purchase from Lessor during the Term of the Lease or at the end of the Term, if, for any reason Lessee does acquire title to the Equipment (including any Parts thereof), or to replacement equipment acquired as a result of manufacturer's maintenance or warranty, then Lessee shall be deemed to have transferred such title to Lessor immediately and will, at its own cost and expense, use all reasonable endeavors to do such further acts and execute such documents as may be necessary to give effect to such transfer. Lessee agrees to take such further actions at its expenses as may be required to protect Lessor's ownership against claims arising directly or indirectly from Lessee's possession or use of the Equipment.

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

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

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

For any software installed on the Equipment, Lessee shall enter into a separate software license or other agreement with the software licensor for the use of the software and such software shall remain the property of the licensor and be governed by the software license between licensor and Lessee. Such software license shall not be affected by or subject to the Lease and, with respect to the software license, Lessor shall have no rights or obligations thereunder. Such software shall not be included with any Equipment returned to Lessor 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 Lessor covenants to Lessee that Lessor or any third party acting or lodging a claim on its behalf, by serving a writ or by bringing any other legal action will not interfere with Lessee's quiet enjoyment of the Products during the Term of the Lease so long as no Event of Default shall have occurred.
- 7.2 Lessor does not provide any other expressed or implied warranty regarding in particular but not exclusively the proper functioning of the Products, their quality, or their compliance with Lessee's needs.
- 7.3 It is agreed that Lessor leases the Products as is. By exception to article 1721 of the French Civil Code, the Lessor is not responsible for latent or hidden defects of the Products. The Lessee expressly renounces to any indemnity or right to termination against the Lessor in such cases.

**8. Liens and Charges**

Lessee hereby agrees to ensure that the Equipment shall at all times be kept free from any lien, charge or encumbrance of any kind, except those created by or through Lessor.

**9. Inspection and Marking**

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

**10. Maintenance and Use**

- 10.1 Lessee shall keep each item of Equipment in good condition and working order, ordinary wear and tear excepted, and shall operate it safely at a Lessee owned or leased business location, unless otherwise approved by Lessor, and in a proper environment as defined by the manufacturer and/or Supplier and in compliance with all applicable laws and regulations. As it relates to any software, embedded or otherwise, Lessee agrees to comply with the terms of the software license and this Agreement.
- 10.2 If required of the owner of the Equipment by the Equipment manufacturer, Lessor 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 Lessee and Equipment manufacturer, including, but not limited to, those that relate to Equipment capacity.

**11. Insurance**

- 11.1 Throughout the Term of the Lease, and as long as Lessor has not recovered possession of the Equipment, the Lessee is liable for all losses or damages that the use or possession of Products may cause to a third party, even if they result from any latent or hidden defects, manufacturing or assembly default, any fortuitous event or any force majeure event, and is responsible for all loss and damage risks that may affect the Products. The Lessor is not responsible for:
- Any damage caused by Lessee's failure to fulfill its obligations;
  - Any damages suffered by Lessee or those caused by the Products, whatever their nature, origin or cause, or any proceeding filed against Lessee by a third party, even if Lessor has been aware of the possibility that such damage could occur.
- 11.2 Liability - Lessee, as possessor and user of the Products, is responsible for any material damages, personal injury or special damages, including but not limited to environmental damages, directly or indirectly caused by the Products or because of their use. In this respect, Lessee undertakes to subscribe, with an insurer of manifest solvency, an insurance policy covering the consequence of Lessee's liability, which will include a clause that extends the coverage to Lessor, in case its liability would be sought. Lessee shall furnish to Lessor, upon request, evidence that such insurance coverage is in effect.
- 11.3 Damages and loss incurred to the Products - As long as the Products are not returned to Lessor, Lessee is liable for all risks of loss, destruction or damages that may affect the Products, for every cause whatsoever, even if the loss, destruction or damage result from a fortuitous event or force majeure event. Lessee shall keep the Products insured, at its expense, against all risk of loss or damage, with an insurer of notably solvency. Lessee shall provide to Lessor, at any time upon request, evidence of such insurance naming Lessor as additional insured and granting Lessor the right to directly receive the payment of insurance indemnities.

- a. Lessee will inform Lessor of every damage affecting the Products, by registered letter with acknowledgement of receipt within five (5) working days following the damage or loss occurrence.
- b. In case of partial damage for any cause whatsoever, the Lease is automatically carried forward and Lessee will repair the damaged Products at its own expense. If a Product is entirely destroyed or stolen, or when the repairing cost is greater than the Product's value, Lessee shall pay to Lessor (i) a termination fee, for lease early termination, equal to all the outstanding Rent due or to be due for such Product until the end of the Lease, and (ii) a penalty charge, for not returning the Product, equal to the residual value of such Product at the end of the Lease, as determined by Lessor. Thereafter the portion of the Lease with respect to such Product shall be terminated and Lessee shall owe no further Rent for such Product.

**12. Alterations**

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

- a. any Parts owned by Lessor that are removed as a result of an Alteration shall remain Lessor's property and shall not be disposed of, exchanged, transferred or sold by Lessee without Lessor's prior written consent. The foregoing shall not apply to Parts removed due to a warranty repair or an engineering change by the manufacturer of the Equipment or its authorized service provider utilizing the manufacturer's genuine parts;
- b. In the event Lessee leases an upgrade with Lessor, Lessor 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 Lessor) 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 Lessor, Lessee shall remove any Alterations not owned by Lessor and restore the Equipment to its original condition using any removed Lessor owned Part(s);
- d. if the Alteration is not removed or Equipment is returned other than in its original condition using any removed Lessor owned Part(s), then Lessee agrees to pay to Lessor, 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 Lessor that are not removed before return of the Equipment to Lessor shall become Lessor's property, without charge, free and clear of all liens and encumbrances.

**13. Leases for Alterations**

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

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

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

**14.2 Sublease and Assignment**

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

**14.3 Lessee Expenses and Responsibilities**

Lessor reserves the right to recover reasonable administrative fees and expenses related to any Assignment, sublease or relocation. Lessee is responsible for all costs, expenses, duties and taxes involved in any Assignment, sublease, or relocation including transit insurance and risk of loss or damage in transit. Lessee is responsible for arranging any relocation and for ensuring compliance with all regulatory conditions for import or export of any Products. Lessee shall not assign, lend, part with possession of, grant use of, sublease or relocate any Products other than as expressly permitted under this Agreement. Any sublease, relocation or assignment of Products shall be subject to all associated

software license terms and it is expressly agreed that it is the Lessee's responsibility to obtain all necessary approvals. Lessee agrees that any Schedule under this Master Agreement shall be binding upon Lessee's successors and permitted assigns.

- 14.4 Each party will comply with all applicable export and import Laws and associated embargo and economic sanction regulations, including those of 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, Lessee may select one of the options listed below or as detailed in the Schedule by providing Lessor an End of Lease Notice. If Lessee fails to give its End of Lease Notice at least thirty (30) days but no more than one hundred eighty (180) days prior to the End of Lease Date then the Lease will automatically continue on a month to month basis. Such Lease will continue under the same terms and conditions and at the Average Rent of the immediately preceding Term until the later of the date that is thirty (30) days after the End of Lease Notice has been received by Lessor and the date on which Lessee has satisfied all the conditions of such selected end of lease option as described herein.

### **15.2 Renew the Lease**

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

### **15.3 Return the Equipment**

At the end of the Term of the Lease, Lessee may elect to return Equipment on the applicable End of Lease Date under the terms and conditions described in this Section 15 and Section 16. If Lessee provides its End of Lease Notice in accordance with Section 15.1 selecting this option but fails to return the Equipment at the end of the Term, then Lessee shall pay Rent for such Equipment equal to the Average Rent from the End of Lease Date until the date such Equipment is received by IBM. If Lessee returns the Equipment on or after the End of Lease Date without providing such End of Lease Notice, then Lessee shall continue to pay Rent for such Equipment equal to the Average Rent from the End of Lease Date until the date that is thirty (30) days following the date on which the Equipment is received by Lessor in accordance with Section 17.

### **15.4 Purchase**

- a. At the end of each Term of the Lease and so long as no Default has occurred and is continuing, Lessee may elect to purchase the Equipment under mutually agreed terms and conditions. If Lessee provides its End of Lease Notice in accordance with Section 15.1 selecting such Purchase Option, Lessee shall pay all amounts due under the Lease to Lessor, including any charges related to the End of Lease Purchase Option. Upon receipt of all such amounts, no further Rent will be payable for the Equipment and, with respect to any purchased Equipment, Lessor shall transfer to Lessee without recourse or warranty of any kind, express or implied, including any warranty against interference or infringement, all of Lessor's right, title and interest in such Equipment, other than the possible warranty remainder of the Supplier, except that Lessor shall warrant the Equipment is free and clear of any liens or encumbrances created by or through Lessor. Considering the scope of this Agreement and the activity of Lessor which is of a financing company, Lessor should not be considered as professional vendor of the Products.

The purchase price for the Equipment will be the following :

- During the Initial Term, the price determined by the Lessor for the effective date of the purchase requested by Lessee.
  - At the end of the Initial Term, the price as stated in the Schedule;
  - At the end of each Renewal Period, the price determined by Lessor upon Lessee's request.
- b. Lessor will retain title of the Products until Lessor receives full payment. If Lessee does not pay Lessor all such amounts, in full on or prior to the due date mentioned on the purchase invoice, including any taxes and costs, then the purchase will be void, without other formality and with no prejudice of applicable damages to the benefit of Lessor and all sums perceived will be definitely acquired to Lessor. The Lease shall continue as defined in Section 15.1 and Lessee will continue to pay Rent to Lessor retroactively from the date the purchase should have taken place until the end of the Lease.

## **16. Sale Commitment**

### **16.1 Sale Commitment**

Provided Lessee has satisfied all its obligations under the Agreement, Lessor undertakes to sell the Products to Lessee, at the end of each Payment Period, except during the first twelve months of the Lease. The date of the end of the Payment



Period chosen by Lessee will be the effective date of the sale. Lessee agrees as from now on that the sale will be subject to the terms and conditions stated under Section 22 hereafter ("Terms of Sale").

The sale will take place without warranty or recourse of any kind, express or implied, other than the possible remaining warranty of the Supplier. Considering the purpose of the Agreement and Lessor's activity, which is that of a financing company, Lessor cannot be considered as a professional vendor of the Products.

The purchase price of the Product will be the following:

- during the Initial Term, the price as determined by Lessor at the effective date of the sale, such sale being requested by Lessee with one month notice;
- as of the date of end of the Initial Term, the price as stated in the Schedule;
- as of the date of end of each Renewal Term, the price as determined by Lessor upon request of Lessee expressed with at least one month notice prior to such date.

#### 16.2 Terms of the sale and retention of ownership

In all cases referred to in Section 16.1 above, Lessee will pay to Lessor, at the due date indicated on the corresponding invoice, all sums due under the Agreement, the sale price net without deduction and all related costs and applicable taxes. Lessor will retain ownership of the Products until full payment of the mentioned sums.

In case of non-payment of any of these sums at the indicated date(s), Lessor will be entitled to pronounce the immediate resolution of the sale, without prejudice to any rights to claim damages, all sums already paid to Lessor remaining definitively acquired to Lessor. The Product will then return to a Lease under the conditions applicable at the effective date as provided for the sale. Lessee will be liable for all Lease Payments owed from that date until the end of the Lease Term.

#### 17. 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 Lessor at Lessee's expense, fully insured against risk of loss or damage, to a location designated by Lessor in metropolitan France. Lessee shall be responsible for deinstallation, packing, and return of the Equipment and any associated costs. Risk of loss or damage remains with Lessee until receipt of Equipment by Lessor at Lessor's designated location.

Lessee is responsible for the removal of all information and data contained within the Equipment prior to its return. Lessor 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). Lessee agrees to pay all costs and expenses incurred by Lessor to restore the Equipment to the condition described above.

Lessee shall have no further right or interest in the Equipment upon its return and Lessee will be able to use it at its own discretion.

#### 18. Events of Default

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

- a. Lessee fails to pay in full any amount under this Agreement when due and such failure continues for a period of seven (7) days;
- b. Lessee fails to perform or breaches any obligation under this Agreement (to the extent not otherwise an Event of Default under any of the other provisions in this Section 18.1) and such non-performance or breach continues for a period of fifteen (15) days after Lessee receives written notice thereof from Lessor;
- c. any information provided, or representation made, by or on behalf of Lessee or any Guarantor is inaccurate, false, or misleading in any material respect;
- d. Lessee sells, assigns, transfers, relocates, subleases or disposes of an item of Equipment or a Part, or makes an Assignment in violation of the terms of this Agreement;
- e. any guarantee of this Agreement required by and provided to Lessor shall cease to be, or shall be asserted by Guarantor not to be, in full force and effect;
- f. Lessee or Guarantor suspends payment of its debts, or fails to pay its debts generally as they become due, or is deemed to be unable to do so; (if no payment occurs after cure period, as provided under b) of this section)
- g. Lessee or Guarantor defaults under any agreement with Lessor or under any other lease under this Master Agreement beyond any applicable cure period; or

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

**19. Remedies**

Following the occurrence of an Event of Default, Lessor may:

- a. terminate this Agreement and any and all other Agreements with Lessee under this Master Agreement and declare all amounts then due and to become due hereunder and thereunder for each item of Equipment not returned to Lessor by Lessee, immediately due and payable;
- b. demand the return of, or take or recover immediate possession of each item of Equipment together with all related software (embedded therein or otherwise) and all additions, attachments, accessories, accessions and upgrades thereto and any and all substitutions, replacements or exchanges for any such Equipment and any and all proceeds of any of the foregoing, including, without limitation, payments under insurance or any indemnity or warranty relating to loss or damage to such Equipment, and remove any software and data from such Equipment without any liability for this action;
- c. pursue any remedy at law.

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

No right or remedy is exclusive of any other provided herein or permitted by law; all such rights and remedies shall be cumulative and may be enforced concurrently or individually. Lessee shall pay all costs and expenses, including reasonable legal fees, costs and expenses, incurred by Lessor in enforcing the terms and conditions of this Agreement.

**20. General****20.1 Exclusions and Limitations**

Except as otherwise provided by mandatory law:

Lessor'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 Lessor is legally liable.

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

- damages resulting from a breach of Lessee's obligations;
- loss of profits, even when they arise as an immediate consequence of the event that generated the damages;
- Indirect damages, even when these damages could have been foreseen or Lessor 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

**20.2 Lessee Representations and Warranties**

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

### 20.3 Security

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

### 20.4 Survival

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

### 20.5 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 Lessor's invoice to Lessee or as otherwise agreed in writing. Notices shall be deemed to be delivered, if personally or by recorded delivery, at the time of delivery, or within three Business Days from the date the mail was posted.

### 20.6 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.

### 20.7 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.

### 20.8 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.

### 20.9 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.

### 20.10 Accounting

Neither IFF, 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.

**20.11 Indemnity**

Lessee shall indemnify and defend Lessor in full against any losses, claims, settlement payments, interest, awards, judgments, damages (including consequential or special damages), fines, fees (including reasonable legal fees and disbursements), expenses and penalties (collectively, "Losses") arising out of or relating to this Agreement or from Lessee's possession and use of the Products that are (i) ordered to be paid by Lessor by a court, governmental agency, or regulatory body, (ii) incurred or paid by Lessor in connection with legal proceedings in respect of third party claims, or (iii) incurred or paid by Lessor in connection with any settlement by Lessor that has been consented to by Lessee. This indemnity shall not apply to Losses caused solely by the gross negligence, or willful misconduct of Lessor. Lessee agrees that upon written demand by Lessor, Lessee shall assume full responsibility for the defense of such claim.

**20.12 Business Contact Information**

IFF and its affiliates, and their contractors and subprocessors, may store and otherwise process business contact information (BCI) of Lessee personnel and authorized users, for example name, business telephone, address, email id's, and identification information, in connection with this Agreement wherever they do business. Where notice to or consent by the individuals is required for such processing, Lessee will notify and obtain the consent of any such individuals.

**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) IFF 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 Lessee and of Lessee'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, Lessee 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.

**Account Data**

Account Data is information, other than data and information ("Content") from all equipment and BCI, that Lessee provides to IFF to enable Lessee's acquisition and use of IBM products or that IBM collects using tracking technologies, such as cookies and web beacons, regarding Lessee's use of IBM products. IFF 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.

**20.13 Financial Statements**

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

**20.14 Direct Debit**

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

**20.15 Copies**

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

Any copy of 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. The parties agree that the documents sent by e-mail will be accepted by way of proof.

**20.16 Use**

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

**20.17 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.

**20.18 Lessor Assignment**

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

**20.19 Lessor's Payment**

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

**20.20 SNC**

The partners in name are jointly and indefinitely severally liable for the company's debts and commit to reimburse all amounts due to IFF. 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.

**20.21 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 IFF. 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 IFF by written notice within a maximum period of thirty (30) days following the aforementioned change.

**20.22 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.

**21. Terms of Sale**

**21.1 Purpose of the Sale**

In the event Lessee elects to acquire the Products, Lessee will buy and Lessor will sell the Products as indicated in the invoice of sale, provided that Lessee has executed and complied with all its obligations with respect to the Lease and subject to the provisions stipulated below.

Products are already installed and are subject to the terms of the entire Master Agreement.

For the purpose of the Agreement, Lessee has ordered the Products to the Supplier in its name but on behalf of Lessor. The provisions of the sale contract of the Supplier, other than those relating to the ownership of Products and to the payment of the Product price, remain in force and are incorporated by reference in these terms of sale.

**21.2 Price and Payment terms**

The price for the sale, granted by Lessor and accepted by Lessee, is indicated in the invoice of sale. The effective date of the sale is however subject to the condition precedent of the payment of the full Product sale price to the Lessor together with any other sums due under the Agreement and all related costs and applicable taxes.

Regardless of the date of the sale (during the Initial Term or the Renewal Term, or when such terms expire), the sale is subject to the terms of sale contained herein. The sold Products will be excluded from the Agreement on the effective date of the sale.

The sale price does not include any sums which are or will be due by the Lessee under any services agreement subscribed for the Products. The sale price takes into account the absence of charges for unplugging and shipping to the Lessor.

The sale price is payable upon receipt of the invoice, net and without discount. In the event of late payment, Lessee shall pay, in addition to all sums due and following formal notice sent by registered letter with acknowledgement of receipt, a late payment fee which will be calculated using the European Central Bank rate for its most recent refinancing operation plus ten (10) points payable from the due date of the unpaid amount up to its payment in full. Lessee shall also 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 additional indemnification, subject to justification of the amount claimed. This provision is without prejudice to other remedies Lessor will be entitled to take pursuant to this Agreement.

Any taxes owed after the effective date of the sale related to the ownership of Products are the responsibility of the Lessee.

### 21.3 Transfer of ownership

The ownership, title and interests in the Products are transferred to the Lessee pursuant to the provisions of section 16 of the Agreement. Lessor will retain ownership of the Products (including title and interests) until full payment of the mentioned sale price, all sums due pursuant to the Agreement and all related costs and applicable taxes.

### 21.4 Damages and loss to the Product

Until and included the effective date of the sale, the risks of loss or damage to the Products will be covered by the provisions of the Agreement. After the effective date of the sale, Lessee will bear all the risks of loss or damage to the Products, even caused by an act of god or a force majeure event.

### 21.5 Warranty

The sale is made without any warranty, guarantee nor right of action, other than the warranty of the Supplier. Considering the Lessor's business activities, which are those of a financial company and not those of a professional seller of products, and the fact that the Products are already used by the Lessee, the Lessee agrees to buy the Products "as is", without any express or implicit guarantee.

## 22. 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.

## **ATTACHMENT 2: MASTER FINANCING AGREEMENT**

### Master Finance Agreement - 05/2018

This Master Finance Agreement is made between IBM France Financement SAS ("Lender" or "IFF") and the Entity who signs the Schedule (the "Borrower"), to enable the Lender to finance professional capital goods and equipment (IBM or other information technology hardware and additional equipment) and/or software and/or incidental services and charges by means of loans granted by the Lender to the Borrower. Lender and Borrower 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.

**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 Lender and Borrower;

**"Amount Funded"** means the amount of the Loan specified as the "Amount Funded" on the Schedule;

**"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 "Borrower" or as "Customer";

**“Business Day”** means any calendar day, except a Saturday, Sunday or any other calendar day on which banks are authorized or required by law to close in the country where Lender is located;

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

**“Commencement Date”** means the date the Loan commences in accordance with 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;

**“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 10;

**“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 first demand guarantee for the Borrower, or a joint liability 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 France Financement SAS;

**“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 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 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”;

**“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; Each Loan will be repaid thanks to several Repayments;

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

**“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 either Borrower or Lender 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 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 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. attachments or addenda to the Schedule;
  - b. the Schedule;
  - c. this Master Agreement.
- 2.3 Borrower 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 loan 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 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 such invoice 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 a reminder letter 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 Payment will be settled by direct debit unless otherwise specified in a Schedule. To this effect, the Borrower agrees to return to Lender, before the Commencement Date, direct debit documentation as required by Lender.
- 3.3 For any Repayment not paid on its due date, the Lender, as a penalty clause, shall be entitled to charge for each month of delay a fee equal to 1% of the amount of the outstanding Repayment. This provision is without prejudice to the other measures Lender will be entitled to take in compliance with the provisions of article 10 hereinafter.
- 3.4 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.
- 3.5 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.
- 3.6 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**

The Borrower hereby authorizes the Lender to pay the Supplier the amount of the invoices on presentation to the Lender of a copy of each invoice bearing Borrower's acceptance with the written words "*Approved for payment by IFF to Supplier for the amount of .....Euros*", together with its signature and indicating the amount to be funded.

For equipment, software and services 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.

**6 Loan Commencement**

The Loan will commence on the Commencement Date below, 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. Lender has received a Confirmation of Acceptance as described in Section 4;
- d. Borrower 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.

6.2 Loan Commencement Date. Provided that the conditions in this Section 6 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.

6.3 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 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 repay a Loan, in its entirety only, by paying all amounts then due and owing, including the amount of the remaining capital due after the last installment increased by the interest incurred since this last payment until the date of repayment, and an early termination fee computed as follows:

- Remaining capital due after the last payment multiplied by the loan’s annual interest rate (%) and divided by four (4).

**9. Assignment**

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

**10. Events of Default**

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 following a formal notice remaining without effect for a period of seven days after it was sent;
- 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. 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. 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;
- f. Borrower or Guarantor defaults under any agreement with Lender or under any of its other loans under the Master Agreement beyond any applicable cure period; or
- g. the opening of proceedings against the Borrower for judicial receivership (subject to receiver's consent);
- h. 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.
- i. 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 this Agreement 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 payability, 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. The amount of the sum to be payable, if no bills have been created, shall be the total remaining Repayments, from the date of the latest payment, increased by accrued interest from this date until the effective Repayment, using the published Money Market Average Monthly Rate plus ten (10) points.
- 11.4. 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.
- 11.5 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 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; and
- i. Borrower has selected each 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 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.

### **12.3 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.

### **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 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.

**12.6 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.

**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 this Agreement.

**12.8 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.

**12.9 Accounting**

Neither IFF, 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.

**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.

**12.11 Business Contact Information**

IFF 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.

**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) IFF 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.

**Account Data**

Account Data is information, other than data and information ("Content") from all equipment and BCI, that Borrower provides to IFF 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. IFF 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.

#### 12.12 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 the 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

#### 12.13 Direct Debit

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

#### 12.14 Copies

This Master Agreement, any Schedule, any Confirmation 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 this Master Agreement, any Schedule, any Confirmation 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. The parties agree that documents sent by e-mail will be accepted by way of proof.

#### 12.15 Use

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

#### 12.16 Counterparts

The Master Agreement, any Schedule, 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.

#### 12.17 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.

#### 12.18 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.

#### 12.19 SNC

The partners in name are jointly and indefinitely severally liable for the company's debts and commit to reimburse all amounts due to IFF. 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.

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

#### 12.20 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 IFF. 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 IFF by written notice within a maximum period of thirty (30) days following the aforementioned change. If a change in Customer's members or company legal status weakens its financial situation and securities, IFF can decline future drawings requested by Customer (subsequently the aforementioned change) within the scope of multiple funding loan contracts.

**13. Governing Law**

This Agreement will be governed by, and construed in accordance with the French laws. 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.