

## Lease Terms and Conditions - 04/2018

The Schedule (as defined below) between Lessor and Lessee (as defined below) is subject to the following terms and conditions for Lease (as defined below) detailed herein ("Terms and Conditions"):

1. **Definitions.** Unless otherwise defined, the following capitalized terms shall have the following meanings when used herein and in any document incorporating or referring to, these Terms and Conditions.

**"Acceptance Date"** means the earlier of (i) acceptance of the Equipment and/or Program License in accordance with the terms of the Supply Agreement and (ii) ten (10) days following receipt of the Equipment and/or Program License by Lessee;

**"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 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, 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 Lessor is located;

**"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 the Section 5;

**"Conditions Precedent"** means, with respect to a Schedule, all statements, certificates, documents, instruments, and additional terms and conditions required by Lessor 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;

**"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, if an applicable End of Lease Purchase Option is designated by Lessor, an option for Lessee to purchase an item of Equipment at a purchase price equal to either:

- a. the amount specified by Lessor, or
- b. the percentage specified by Lessor of the "Amount Funded" listed on the Schedule, or
- c. the Fair Market Value of such Equipment;

**"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 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 an item of Equipment or a Program License, 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 Equipment or Program Licenses under this Agreement as specified on the Lease table on the Schedule;

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“**Lessee**” means, with respect to a Schedule, the Entity that signs the Schedule as Customer;

“**Lessor**” means IBM ISRAEL LTD, IGF Division;

“**Licensor**” means the Entity who licenses the Program License to the Lessee;

“**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 Program Licenses;

“**Program License**” means a license of software that is specified as a separate item on the Lease table of a Schedule, which is leased by Lessor to Lessee hereunder;

“**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 Equipment and/or a Program License; 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;

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

“**Schedule**” means a document that refers to and incorporates these Terms and Conditions and contains the details of the Lease that is the subject matter to that Schedule (also: “Transaction 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 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. 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, Rent, 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 Lessee may, upon consent of Lessor, enter into Schedules incorporating these Terms and Conditions set out herein. Each Schedule shall constitute a separate lease 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 edition update of this edition of Terms and Conditions shall have no effect upon any Schedule executed by Lessor and Lessee prior to the date such termination or edition update.

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- 2.6 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 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. 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 For any Payment not paid in full by its due date, Lessee 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 Lessee 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 Lessee's other obligations to Lessor or, in the event such other obligations have been satisfied in full, refunded to Lessee.
- 3.3 Lessee agrees that, upon the Commencement Date, Lessee's obligations under this Agreement become irrevocable and independent of acceptance of the Product, and Lessee's obligation to make all Payments in full when due, becomes absolute and unconditional, without set off, counterclaim, withholding, deduction, abatement, recoupment, or defense of any kind, and irrespective of errors or deficiencies in or the performance or the quality of the Product, or the performance by the Supplier or any other third party.
- 3.4 At Lessor's discretion, following the occurrence of a Default, Payments received by Lessor will be applied in the following order: first to Late Payment Fees, second to overdue Rent, and third to other Payments.
- 3.5 Lessee is responsible for any taxes and charges arising in respect of any Lease and/or any Product, except for Lessor'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. Supplier

- 4.1 For each item of Equipment and/or Program License, 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 Equipment and/or Program License 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 Equipment and/or Program License shall remain with Lessee. As between Lessor and Lessee, the rights and obligations of Lessee in relation to the Equipment and/or Program License 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 Equipment and/or Program License 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 non-exclusive 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 or Program License.

### 5. Lease Commencement

- 5.1 The Lease will commence on the Commencement Date provided that:
- the Schedule is duly executed by Lessee and received by Lessor on or prior to the Validity Date and is accepted by Lessor;
  - the Commencement Date occurs by the end of the Planned Commencement Month;
  - Lessor receives a Supplier invoice reasonably satisfactory to Lessor (e.g. amount, equipment);
  - Lessee has satisfied all of the Conditions Precedent; and
  - 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 Equipment and/or Program License, including any obligation to pay the purchase price of the Equipment and/or Program License. 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:
- for Equipment and/or Program License supplied directly by IBM, the shipment date of such Equipment and/or Program License, unless Lessee notifies Lessor in writing that it has not accepted the Equipment and/or Program License prior to the Acceptance Date; and

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- b. for any other leased Equipment and/or Program Licenses, the date Lessee accepted the Equipment and/or Program Licenses as specified by Lessee 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.

### 6. Ownership

- 6.1 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 as may be required to protect Lessor's ownership against claims arising directly or indirectly from Lessee's possession or use of the Equipment. Except as otherwise expressly provided herein with respect to the lease of Program Licenses, 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.

### 6.2 Disclaimer of Warranties

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, AS BETWEEN LESSOR AND LESSEE, LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT OR THE LIKE. AS TO LESSOR, LESSEE LEASES THE EQUIPMENT AND/OR PROGRAM LICENSE "AS IS".

### 7. Quiet Enjoyment

- 7.1 Lessor covenants to Lessee that Lessor will not interfere with Lessee's quiet enjoyment of the Equipment and/or Program License during the Term of the Lease so long as no Event of Default shall have occurred.

### 8. Liens and Charges

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

### 9. Inspection and Marking

- 9.1 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 be responsible for loss or damage to the Equipment. 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 Lessee shall be responsible for loss or damage to the Equipment and to carry primary property damage insurance covering the Equipment naming Lessor and any assignee as an additional insured as their interest may appear.
- 11.2 Upon the Commencement Date and up to the time the Equipment is received by Lessor at its designated return location, Lessee shall keep the Equipment insured, at its expense, against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof. All such insurance shall be in commercially reasonable form and manner and from an insurer reasonably acceptable to Lessor. Lessee shall furnish to Lessor, upon request, evidence that such insurance coverage is in effect. The occurrence of such loss or damage shall not relieve Lessee of any obligations hereunder. If there is loss or damage to, or theft of Equipment, Lessee will immediately notify Lessor and either:
  - a. within five Business Days of such occurrence, repair or replace the Equipment at Lessee's expense, passing to Lessor full legal and beneficial title to any replacement equipment or replacement parts, free of all liens and encumbrances of any kind, provided such replacement equipment is acceptable to Lessor; or

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- b. pay an amount equal to (i) any and all Rent and other amounts, in each case, due or to become due under this Agreement with respect to such Equipment, and (ii) the Equipment's end of lease purchase price in accordance with the End of Lease Purchase Option if specified on the Schedule or, if such End of Lease Purchase Option is not specified on the Schedule, then the end of Term FMV for such Equipment. Thereafter the portion of the Lease with respect to such Equipment shall be terminated and Lessee shall owe no further Rent with respect to such Equipment.

11.3 Intentionally omitted.

### 12. Alterations

12.1 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.

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.

### 13. Leases for Alterations

13.1 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 Equipment and/or Program Licenses 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 Equipment and/or Program Licenses. 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 Equipment and/or Program License or make an Assignment 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 Equipment and/or Program Licenses. Lessee shall not assign, lend, part with possession of, grant use of, sublease or relocate any Equipment and/or Program Licenses other than as expressly permitted under this Agreement. Any sublease, relocation or assignment of Equipment and/or Program License 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 subject to these Terms and Conditions shall be binding upon Lessee's successors and permitted assigns.

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### 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 sixty (60) 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 Lessor. 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 16.

#### 15.4 Purchase

At the end of each Term of the Lease and so long as no Default has occurred and is continuing, if the Equipment has a Purchase Option specified, then 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 Program License and/or 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, except that Lessor shall warrant the Equipment is free and clear of any liens or encumbrances created by or through Lessor. If Lessee does not pay Lessor all such amounts on or prior to the applicable End of Lease Date, then Lessee shall continue to pay Rent to Lessor in accordance with Section 15.1 until receipt by Lessor of all the amounts due.

### 16. Equipment Return

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

### 17. Program License (software)

These terms shall apply to a Lease of Program License.

#### 17.1 Selection and Use

For one time charge perpetual Program License will be granted to Lessee by the Licensor, subject to Lessee's compliance with its terms. In consideration of Lessor's payment for the Program License, Lessee agrees to make the Payments to Lessor as described in the Agreement. The terms and conditions relating to the software shall be governed by its Program License, except for the right of use, which by Lessor agreement with the Licensor, will be provided by Lessor to Lessee for the Initial Term of the Lease. After making all Payments, continued use of the Program License shall be subject to compliance with its terms and conditions detailed in its license. It is a condition of Lessee's use of the software that Lessee shall comply with the terms and conditions detailed in the Program License and the Agreement. If Lessor become aware that Lessee is not complying with the terms and conditions governing the use of the Program License, Lessor shall be entitled to terminate Lessee's right to use the Program License and demand return of the Program License, together with any supporting documentation.

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### 17.2 Termination

Upon termination of the Lease, providing Lessee is not in default, Lessee's continued use shall be under terms and conditions governing the use of the Program License, as granted by the Licensor.

### 18. Events of Default

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

- a. Lessee fails to pay in full any amount under this Agreement when due and such failure continues for a period of seven 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 a Program License, 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. (i) any petition or proceeding is filed by or against Lessee or any Guarantor under any bankruptcy, liquidation, insolvency, receivership or similar law, and, if such petition or proceeding is filed against Lessee or Guarantor, is not dismissed within sixty (60) days after such filing, or (ii) Lessee or any Guarantor admits in writing its insolvency or inability to pay its debts as they come due;
- g. Lessee 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;
- h. Lessee 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;
- i. Lessee or Guarantor defaults under any agreement with Lessor or under any other lease Schedule, beyond any applicable cure period; or
- j. any person, entity or group acquires a majority interest in, or the ability to control, Lessee, unless such person, entity or group owned a majority interest in or had the ability to control Lessee as of the Commencement Date.

### 19. Remedies

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

- a. terminate this Agreement and any and all other agreements with Lessee and declare all amounts then due and to become due hereunder and thereunder, including any applicable End of Lease Purchase Option for each item of Equipment not returned to Lessor by Lessee, 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 18.1(f), this Agreement and any and all other Agreements with Lessee shall automatically terminate and all amounts then due and to become due hereunder and thereunder, including any applicable End of Lease Purchase Option for each item of Equipment not returned to Lessor by Lessee, (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) shall automatically become 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 or software 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 Program License, and remove any software and data from such Equipment without any liability for this action;
- c. require Lessee to terminate use of any Program License hereunder, or request Licensor to terminate Lessee'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. 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

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Except with respect to Section 20.11 Indemnity, in no event shall either Party have any liability for, nor shall Lessee have any remedy against Lessor 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 Lessee's obligations to pay Rent, taxes or any other payment obligations (including without limitation, Lessee's indemnity obligations) under this Agreement. The limitation of liability in this Section shall in no way affect Lessee'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. Lessor shall not be liable for any claim, damage or loss arising from the Products. Under no circumstances shall Lessor be liable for loss of, or damage to, Lessee's records or data.

### 20.2 Lessee Representations and Warranties

Lessee represents and warrants to Lessor 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 Lessee's signatories to this Agreement have the authority to bind the Lessee and do so by its 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 Equipment and/or Program Licenses 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;
- h. Lessee has selected each Product listed in the Schedule and accepts responsibility for its use and the results obtained therefrom; and
- i. Lessee represent and warrant that the terms of the Agreement supersede any conflicting terms under a Supply Agreement.

### 20.3 Security

As a condition of entering into this Agreement, Lessor may require security or guarantee 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 or guarantee, Lessor may exercise such security or guarantee 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 the Schedule 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 or delivered.

### 20.6 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.

### 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.

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### 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 IBM, nor any other IBM organization or IBM affiliate makes any representation whatsoever regarding Lessee's accounting treatment applicable to this Agreement. International Business Machines Corporation accounts for receivables under this Agreement as financing receivables or US reporting purposes GAAP for U.S. 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

Lessee agrees that IBM and its affiliates, and their contractors and subprocessors may store and otherwise process the business contact information of Lessee's personnel and authorized users and information about Lessee 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 Lessee, 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, Lessee will notify and obtain the consent of any such individuals.

### 20.13 Intentionally omitted.

### 20.14 Intentionally omitted.

### 20.15 Copies

These Terms and Conditions, 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 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.

### 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

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.

### 20.18 Lessor Assignment

Lessor 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. 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 Account Data

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

## **Lease Terms and Conditions - 04/2018**

### **21. Governing Law**

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