



**IBM Global Financing
Master Financing Agreement – January 2015 Edition**

This Master Financing Agreement (the “Agreement”) governs financing transactions between IBM United Kingdom Financial Services Limited (“IGF”) and its Clients. By signing a Transaction Document incorporating these terms, IGF and the Client agree to the terms of this Agreement. The specific details of each financing transaction will be contained in a Transaction Document.

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1 DEFINITIONS

“**Agreement**” means this IGF Master Financing Agreement;

“**Alteration**” means any change to the Equipment, which is not a Modification;

“**Amount(s) Financed**” means the amount financed under the relevant Lease, Loan or Other Financing;

“**BPT**” means payments in respect of an agreement between IBM and Client, for which IGF is acting as billing and collection agent for IBM, under a Transaction Document;

“**Business Contact Information**” means the business-related contact information as stated in Clause 9.13;

“**Business Day**” means any day other than Saturday or Sunday or a Bank Holiday in England;

“**Certificate of Acceptance**” means a certificate in the form provided by IGF, and signed by Client, denoting acceptance of the Products following delivery and authorising settlement of the Supplier invoice;

“**Client**” means the party identified as the Client on the Transaction Document;

“**Discount Rate**” means the lower of:

- i) 12 month LIBOR as stated in the Financial Times on the date the Early Termination Charge is calculated by IGF, and
- ii) the rate stated in a Transaction Document;

“**Early Termination Charge**” means in respect of any Lease, Loan or MTC, at the date of termination, the total of:

- i) a sum equal to any amounts, including late Payment interest, that have fallen due, but have not been paid, and
- ii) the present value, calculated using the Discount Rate, of any Payments not yet due and any Option Charge;

“**End of Term Notice**” means notice in writing of the selected end of Term option, given to IGF, at least 30 days prior to expiry of the Initial Term or any selected Secondary Term;

“**Enterprise**” means the corporations, companies or other entities for which one entity owns or controls, directly or indirectly, more than fifty per cent of the voting rights or otherwise has the power to make decisions, or to appoint directors or other managing authority for the entity;

“**Equipment**” means machines, upgrades, Parts or similar items supplied under a Supply Contract;

“**Event of Default**” means any of the events stated in Clause 7;

“**Fair Market Value**” means the fair market value of the Equipment as determined by IGF to be the amount that could be realised in an arm’s length sale between a willing buyer and a willing seller;

“**Guarantor**” means a company providing a guarantee of Client’s obligations arising under a Transaction Document;

“**IBM**” means IBM United Kingdom Limited; and “**IBM Company**” means a member company of the Enterprise which includes International Business Machines Corporation;

“**Initial Term**” means the initial term as specified in the Transaction Document in respect of any Lease or Other Financing, plus the period of time elapsing between the Start Date and the Payment Start Date;

“**Insolvency**” means, in relation to:

- i) **a company:** a) the convening of any meeting to pass a resolution for voluntary winding up by reason of insolvency; or b) the making of a winding up order; or c) the receipt of notice of intention to appoint, or the issuing of an application for the appointment of an administrator (whether in or out of court); or d) the appointment of a receiver; or e) the appointment of an administrative receiver over any of the assets or income of the company; and
- ii) **a partnership:** a) the issuing of a petition for its bankruptcy or that of any partner; or b) its winding up; or c) the receipt of notice of intention to appoint, or the issuing of an application for the appointment of an administrator (whether in or out of court); and
- iii) **a company or partnership:** a) entering into a voluntary arrangement; or b) making any formal or informal arrangement generally for the benefit of creditors; or c) any material part of income or assets being subject to seizure, distress, sequestration or other legal process; or enforcement of security rights; or d) making of any arrangement or composition or compounding with or for the benefit of creditors, or calling any meeting for the purpose of the same; or e) ceasing or threatening to cease to carry on business; or f) becoming unable to meet its debts within the meaning of s.123 IA 1986;

and means any event analogous to any of the above events in any jurisdiction to which any such company or partnership is subject; and “**Insolvent**” shall be construed accordingly;

“**Lease**” means a lease of Products as set out in a Transaction Document;

“**Lease Commencement Date**” means the date a Lease commences in accordance with Clause 4.2.1;

“**Loan**” means the Amount Financed by way of loan set out in a Transaction Document;

“**Loan Commencement Date**” means the date the Loan commences in accordance with Clause 5.2;

“Material Adverse Change” means a significant adverse change to the business operations, business results or financial condition of Client or any Guarantor or in any security for Payment provided by or on behalf of Client, which, in the opinion of IGF, makes it unlikely that Client will be able to meet its Payments. In reaching its opinion IGF may consider financial information provided by Client;

“Modification” means an upgrade or addition to Equipment, offered for sale and fitted as specified, by the manufacturer;

“MTC” means payments in respect of a maintenance agreement between IBM and Client, which are rescheduled, invoiced and collected by IGF as agent for IBM under a Transaction Document;

“Option Charge” means:

- i) for Type FMV1 and Type LPO2, the amount specified in a Transaction Document at the end of Initial Term or Fair Market Value thereafter; or
- ii) for Type FMV and Type LPO1, the Fair Market Value at the end of the Initial Term or thereafter;

“Other Financing” means BPT and MTC either collectively or singularly as the case may be;

“Part” means any component or element of the Equipment;

“Party” means either Client or IGF; and **“Parties”** means Client and IGF;

“Pay Frequency” means the periodic frequency for Payments stated in a Transaction Document;

“Payment(s)” means the amount payable to settle Rent, Repayments, MTC or BPT or any of the same, together with any sum due from time to time, by way of Option Charge or otherwise, under a Lease, Loan, or Other Financing;

“Payment Start Date” means the first day in the month following the Start Date, unless otherwise agreed in writing;

“Product(s)” means collectively Equipment, Software and Services subject to the terms of this Agreement;

“Renewal Rental” means the amount to renew Lease Types FMV or FMV1 at the end of the Initial Term or any applicable renewal or continuation period. The Renewal Rental will be specified in the relevant Transaction Document for Type FMV1, and for Type FMV will be based upon the Fair Market Value at the end of the Initial Term;

“Rent” means the periodic Payments for the use of the Products stated in a Transaction Document;

“Repayments” means the repayments in respect of a Loan stated in a Transaction Document;

“Return Date” means the date the Term expires unless otherwise agreed in writing;

“Secondary Term” means the secondary period of a Lease;

“Secondary Term Rental” means the amount, where applicable, stated in a Transaction Document;

“Services” means services supplied under a Supply Contract;

“Software” means programs supplied to Client under a Software Licence;

“Software Licence” means a licence of Software between the licensor and Client;

“Start Date” means the Loan Commencement Date, the Lease Commencement Date or the commencement date of the Other Financing, each as applicable;

“Supplier” means the company supplying Products under a Supply Contract;

“Supply Contract” means a contract for the supply of Products to Client;

“Term” means the Initial Term and Secondary Term, or the term of a Loan, as appropriate;

“Transaction Document” means a Transaction Document which incorporates the terms of this Agreement, executed by the Parties;

“Type” means the financing type stated in a Transaction Document;

“Validity Date” means the date stated in a Transaction Document by which the Lease, Loan and/or Other Financing must start;

“VAT” means Value Added Tax.

2 AGREEMENT STRUCTURE

- 2.1 This Agreement sets out the terms and conditions for Leases, Loans, and/or Other Financing.
- 2.2 Client and IGF may enter into Transaction Documents incorporating in full the applicable terms and conditions set out in this Agreement. Each Transaction Document shall form a separate agreement. In the event of conflict between a Transaction Document and this Agreement, the terms of the Transaction Document shall prevail.

3 PAYMENT AND TAXES

- 3.1 Client agrees to make the Payments set out in the Total Payment Profile in the Transaction Document, and such other Payments as may thereafter become due. Time shall be of the essence in relation to Payments. Due date for Payments shall be calculated in accordance with the Total Payment Profile. Any Payment date falling on a non-Business Day shall become due on the next Business Day.
- 3.2 For any Payment not made on the due date, Client agrees to pay late payment interest on demand calculated at 8% per annum above the Bank of England base rate applied to the unpaid amount on a daily basis, from the due date of Payment until the actual date of Payment in full, subject to maximum limitations by law.
- 3.3 Client agrees to make all Payments when due, in full, without set off, counterclaim, or deduction of any kind, irrespective of the performance or loss of Products, or the performance by IGF or any other IBM company under any other agreement with Client.
- 3.4 Payments received will be set against late Payment charges, overdue Payments and other Payments in that order.
- 3.5 After the Start Date, Payments will not change other than through changes in the applicable VAT rate. If there is a change in the VAT rate, Client hereby agrees that IGF may adjust the relevant Payments accordingly.
- 3.6 If the Amount Financed changes before the Start Date, IGF shall either:
- i) adjust the relevant Payments accordingly, or
 - ii) require a new Transaction Document, or
 - iii) decline the transaction.
- 3.7 Client will not be entitled to any rebate of Rent for any period during which the Products are not in the possession of Client, or are un-serviceable, out of order or unusable.
- 3.8 Client is responsible for any taxes and charges arising in respect of Leases, Loans or Other Financing, except for IGF corporation tax.

4 LEASE (Applicable to Types FPO, LPO, LPO1, LPO2, FMV and FMV1)

4.1 Relationship with Supplier

- 4.1.1 The rights and obligations of Client in relation to the Lease are set out exclusively in this Agreement and the Transaction Document. The rights and remedies of Client and the obligations of the Supplier are set out exclusively in the Supply Contract, in relation to Equipment and Services. The Supply Contract continues to apply in all respects, other than IGF's assumption of the obligation to pay for Products and title to Equipment passing to IGF on such payment. It is acknowledged that whilst IGF is not liable for Product performance or Product related issues, nothing in this Agreement or any Transaction Document shall affect any remedies Client may have against the Supplier.
- 4.1.2 Except in relation to any one time charge Software Licences that are separately financed under a Transaction Document as Software (if applicable), for any operating software that is pre-loaded onto the Equipment and included in the total Amount Financed ("Operating Software"), Client shall ensure it has a separate software licence or other agreement with the software licensor for the use of the Operating Software and such Operating Software shall remain the property of the licensor and be governed by the software licence between licensor and Client. Other than in relation to payment, such software licence shall not be affected by or subject to the Lease and, with respect to the software licence, IGF shall have no rights or obligations there under. Such Operating Software shall not be included with any Equipment returned to IGF. Even in the event that such Operating Software is returned to IGF, IGF shall have no rights in the Operating Software. In the event that the Equipment is sold by the Client to a third party as provided for in this Agreement (if applicable), and the Operating Software remains on the Equipment, the responsibility for the transfer of any software licences to the third party for the Operating Software shall be the sole responsibility of the Client, and IGF shall have no obligation there under.

4.2 Commencement of Lease

- 4.2.1 The Lease Commencement Date will be as follows, provided that in all cases Lease Commencement Date is not after the Validity Date,
- i) for Products supplied directly by IBM, the shipment date, unless Client notifies IGF in writing that it has not accepted the Product prior to the Acceptance Date. For purposes of this Agreement, "Acceptance Date" shall mean the earlier of a) acceptance of the Product in accordance with the terms of the Supply Contract and b) 10 days following receipt of the Product by Client;

- ii) for Products not supplied directly by IBM, the date that Client accepted the Products as specified by Client on a duly executed Certificate of Acceptance, provided that Client returns the Certificate of Acceptance to IGF by the earlier of a) 10 days after the date that Client accepted the Products, and b) the Validity Date;
 - iii) for sale and leaseback / hireback transactions, the date on which IGF pays the sale price to Client.
- 4.2.2 Following the Lease Commencement Date IGF will pay the valid relevant Supplier invoice upon receipt of the relevant Certificate of Acceptance or following shipment of IBM Products by IBM as applicable.
- 4.2.3 If the Lease has not commenced by the Validity Date, IGF reserves the right not to pay the Supplier.

4.3. Ownership of Equipment

- 4.3.1 Title to the Equipment will transfer from the Supplier to IGF on payment by IGF of the Supplier's invoice, and will remain with IGF throughout the relevant Term. If for any reason Client does acquire title, other than IGF passing title to Client for Types LPO, LPO1 and LPO2, Client shall transfer such title to IGF immediately and agrees to take such further actions as may be required to protect IGF's ownership against claims arising directly from Client's possession of the Equipment.

4.4. Lease Representations and Warranties

- 4.4.1 The following representations shall be made before and shall continue during the Term of Lease(s):
- i) IGF represents and warrants to Client that it will not interfere with Client's quiet enjoyment of use or possession of the Products, unless there is an Event of Default or upon termination of the relevant Lease.
 - ii) Client represents and warrants to IGF that in relation to Products that are or will be described in Transaction Documents:
 - a) it will select Products, accept responsibility for their use and the results obtained therefrom, and
 - b) Products will be used primarily for business purposes.
 - iii) Client acknowledges that no other condition, warranty or representation of any kind (except as expressly stated herein) is given by IGF in relation to Products.
- 4.4.2 All conditions and warranties, express or implied, statutory or otherwise, made as to the condition, quality or description of Products or as to their purpose are expressly excluded by IGF.

4.5. Liens and Charges

- 4.5.1 Client hereby undertakes in favour of IGF to ensure that:
- i) Products at all times will be kept free from any lien, charge or encumbrance of any kind, and
 - ii) no mortgage, charge, assignment or any other security interest whatsoever over or in respect of the Products shall be created.

4.6. Inspection and Marking

- 4.6.1 Client shall permit IGF, upon prior written request, to inspect Equipment, any Parts, and maintenance records during Client's normal business hours. Client will, on request, affix identifying labels, plates or tags to Equipment, provided that they do not interfere with its normal operation.

4.7. Maintenance and Use

- 4.7.1 Client shall keep Equipment in good repair and operating condition, ordinary wear and tear excepted, and operate it safely in a proper environment.

4.8. Risk of Loss or Damage

- 4.8.1 Risk of loss or damage to Software and Equipment is assumed by Client throughout the Term.
- 4.8.2 If there is loss or damage to, or theft of, Equipment and/or Software, Client will either;
- i) promptly repair or replace Equipment and/or Software at its own expense, passing title in any replacement Equipment to IGF, or
 - ii) pay IGF the applicable Early Termination Charge.

4.9. Modifications and Alterations

- 4.9.1 Client may modify or alter Equipment subject to the following provisions:
- i) any Parts owned by IGF which are removed as a result of an Alteration shall remain IGF's property and shall not be sold by Client.
 - ii) prior to return to IGF, Client may remove any Alterations or Modifications not owned by IGF and restore Equipment to its original condition (ordinary wear and tear excepted) and good working order.
 - iii) if Equipment is returned other than in its original condition (ordinary wear and tear excepted) or not in good working order, Client agrees to pay to IGF any diminution in value of Equipment or the cost to restore Equipment to its original condition (ordinary wear and tear excepted).
 - iv) all Modifications or Alterations not removed before return to IGF shall become IGF property, without charge, free of liens and encumbrances.

4.10 Relocation

4.10.1 Client may relocate Equipment within the United Kingdom, with prior written notice to IGF.

4.11 Early Termination

4.11.1 Client may terminate Leases by providing 30 days written notice to IGF, to expire at least 24 months after the Lease Commencement Date and by paying the Early Termination Charge. If Equipment has been subject to a Modification Client shall terminate all applicable Leases on the same date.

4.11.2 For Types FPO, FMV and FMV1 following payment of the Early Termination Charge, Client shall then sell Equipment, as set out in Clause 4.14. Software may not be sold. Continued use of any Software shall be provided under the terms of the Software Licence. For Types LPO, LPO1 and LPO2 IGF will pass title in Equipment to Client following payment of the Early Termination Charge.

4.12 End of Initial Term

4.12.1 At the end of the Initial Term, provided Client is not in default under the Lease, Client may select an end of Initial Term option for the relevant Type as indicated below, by providing the End of Term Notice. If Equipment has been subject to a Modification Client shall select the same options for each applicable Lease.

Lease Purchase – Type LPO

4.12.2 Provided all Payments due under the Lease have been made IGF shall pass title in Equipment to Client on the date on which all Payments are received by IGF.

4.12.3 No further Rent will be payable. End of Term Notice is not required.

Options for Lease Purchase with Residual Value – Types LPO1 and LPO2

4.12.4 i) **Pay the Option Charge.** On receipt IGF will pass title in Equipment to Client. No further Rent will be payable; or

ii) **Return the Equipment** to IGF in accordance with Clause 4.13.

If Client fails to give End of Term Notice, the Initial Term of the Lease will continue, subject to the same terms and conditions and at the average Initial Term Rent, until End of Term Notice has been given and expired.

Options for Full Payout Lease - Type FPO

4.12.5 i) **Renew the Lease** for a minimum of 12 months and pay the Secondary Term Rental annually in advance. At any time during the Secondary Term Rental period Client may, by giving at least 30 days written notice, terminate the Lease and sell Equipment in accordance with Clause 4.14. No rebate of the Secondary Term Rental will be given in respect of any unexpired Secondary Term period; or

ii) **Sell Equipment** in accordance with Clause 4.14; or

iii) **Return Equipment** to IGF, in accordance with Clause 4.13; or

iv) **Continue in the Initial Term** of the Lease, at the average Initial Term Rent, and thereafter upon 30 days written notice exercise one of options (i), (ii) or (iii) above.

4.12.6 If Client fails to give End of Term Notice, the Lease shall, by default, be renewed in accordance with Clause 4.12.5(i).

4.12.7 The above options are not applicable to Software and installation services financed on Type FPO, for which, on expiry of the Initial Term, provided the Client is not in default under the Lease, the Lease shall terminate.

Options for Residual Value Lease – Types FMV and FMV1

4.12.8 i) **Renew the Lease** for a minimum of 12 months and pay the Renewal Rental annually in advance. At any time during the renewal period Client may give 30 days written notice to IGF to terminate the Lease and upon payment of the Option Charge either:

(a) return Equipment to IGF in accordance with Clause 4.13; or

(b) sell Equipment in accordance with Clause 4.14.

No rebate of Renewal Rental will be given in respect of any unexpired renewal period; or

ii) **Pay the Option Charge** and either;

(a) sell Equipment in accordance with Clause 4.14; or

(b) renew the Lease and pay the Secondary Term Rental in accordance with Clause 4.12.5(i); or

iii) **Return Equipment** to IGF in accordance with Clause 4.13; or

iv) **Continue in the Initial Term of the Lease** at the average Initial Term Rent and thereafter upon 30 days written notice, exercise one of options (i), (ii) or (iii) above.

4.12.9 If Client fails to give End of Term Notice, the Lease shall, by default, be continued in accordance with Clause 4.12.8(iv).

4.13 Return of the Equipment

4.13.1 Equipment returned shall be at Client's expense, fully insured against risk of loss or damage, to a place in the United Kingdom designated by IGF. Risk of loss or damage remains with Client until receipt of Equipment by IGF.

4.13.2 Client is responsible for the removal of any of its data contained within Equipment prior to its return. IGF will not accept any obligation of confidentiality or security in relation to such data.

4.13.3 Upon return Equipment shall be complete and in such condition as will qualify for the manufacturer's maintenance agreement service. Client agrees to pay all costs and expenses incurred by IGF:

- i) in restoring Equipment to such condition including inspection, repair, reconditioning, and acquisition of replacement Parts. This may include replacement of Equipment where necessary; and/or
- ii) associated with the removal of data in accordance with the obligation in Clause 4.13.2.

4.13.4 Client shall have no further right or interest in Equipment upon its return and IGF may dispose or use Equipment as it deems appropriate.

4.13.5 If Equipment is not returned by the Return Date Client agrees to pay:

- i) For Types LPO1, LPO2, FMV and FMV1 the average Initial Term Rent; or
- ii) For Type FPO the average Secondary Term Rental,

until 30 days following the date on which Equipment is returned in accordance with this clause.

4.14 Sale of Equipment as Agent of IGF

4.14.1 When Client selects the option to sell the Equipment the sale shall be in accordance with the following terms:

- i) Client agrees to act as the agent of IGF. Client is responsible for the removal of any of its data contained within Equipment prior to its sale. IGF will not accept any obligation of confidentiality or security in relation to such data; and
- ii) Sale must be on arms length terms, at the market value of Equipment and must not be to a person connected to Client within the meaning of Section 839 of the Income and Corporation Taxes Act 1988 or any re-enactment of it, nor to a person located outside the United Kingdom; and
- iii) Client will receive 99% of the proceeds of sale, as a rebate of Rent, once IGF has received the Early Termination Charge or Option Charge, as applicable, and any other payments due, including the payment due from the third party for the sale. If IGF does not receive such amounts due within 60 days of the date of early termination or the end of Term, as applicable, the Lease will be re-instated.

4.15 Software

These terms shall apply to a Lease of Software.

4.15.1 Selection and Use

For one time charge perpetual licence Software, a perpetual licence will be granted to Client by the licensor. In consideration of IGF's payment of the Software Licence fee, Client agrees to make the Payments to IGF. The terms and conditions relating to Software shall be governed by the Software Licence, except for the right of use, which, by IGF's agreement with the licensor, will be provided by IGF to Client for the Initial Term of the Lease. After making all Payments, continued use of the Software shall be provided under the terms of the Software Licence. It is a condition of Client's use of the Software that Client shall comply with the terms of the Software Licence and this Agreement. If IGF becomes aware that Client is not complying with the terms and conditions governing the use of the Software, IGF may terminate Client's right to use the Software and require return of the Software, together with any supporting documentation.

4.15.2 Termination

Upon termination of the Lease, providing Client is not in default, IGF shall have no further interest in the Software and continued use shall be under the Software Licence. Any matters relating to the continued use or return of the Software should be addressed to the licensor of the Software.

5 LOAN

5.1 Purpose

5.1.1 Loans are made for the purpose of paying the Supplier of Products under a Supply Contract. Unless otherwise agreed in writing, IGF will pay the Loan directly to the Supplier, following receipt of written authorisation from Client and a copy of the supporting invoice from the Supplier.

5.2 Commencement of Loan

5.2.1 The Loan Commencement Date is the date on which IGF pays the Supplier or otherwise provides funds. If the Loan has not commenced by the Validity Date, IGF reserves the right not to advance the Loan.

5.3 Term

5.3.1 The Loan Term is the period described as Initial Term in the Transaction Document plus the period of time lapsing between the Start Date and the Payment Start Date.

5.4 Repayments

5.4.1 Client agrees to make the Repayments in accordance with Clause 3 of this Agreement.

5.4.2 The Loan is repayable at any time, by providing 30 days written notice to IGF and paying the Early Termination Charge.

6 OTHER FINANCING

6.1 For Other Financing Products, Client agrees to make the Payments set out in the Total Payment Profile in the Transaction Document.

6.2 The commencement date for Type BPT and Type MTC shall be the start date as defined in the relevant IBM agreement.

6.3 If the Other Financing has not commenced by the Validity Date, IGF reserves the right not to commence the Other Financing.

6.4 Type MTC may be terminated by providing 30 days written notice to IGF and paying the Early Termination Charge.

6.5 Type BPT may be terminated in accordance with the terms of the relevant IBM agreement.

7 EVENTS OF DEFAULT

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

7.1 failure to pay in full any Payment when due;

7.2 non performance or breach of any obligation under a Lease, Loan or Other Financing;

7.3 provision of any inaccurate, false or misleading information or representation which induced IGF to enter into this Agreement or any Leases, Loans or Other Financing;

7.4 use of a Loan for anything other than an agreed purpose;

7.5 the occurrence of a Material Adverse Change;

7.6 any guarantee of Payment to IGF becomes unenforceable;

7.7 Client or Guarantor becomes Insolvent, or suspends or threatens to suspend payment of its debts, or fails to pay debts generally as they become due, or is deemed to be unable to do so;

7.8 Client or Guarantor sells or disposes of all or a substantial part of its assets without the consent of IGF;

7.9 Client defaults under any other agreement with IGF;

7.10 any significant event has occurred that permits the holder of any of Client's or Guarantor's material obligations or indebtedness to accelerate their maturity or Client or Guarantor fails to pay when due any such obligations or indebtedness;

7.11 any material change occurs in the control of Client or Guarantor, from that subsisting at the date of any Transaction Document, and in IGF's reasonable opinion this change will affect Client's ability to make Payments;

7.12 Client does not comply with any additional conditions stated in a Transaction Document throughout the Term;

7.13 IGF's authorised direct debit from Client's bank account is refused.

8 REMEDIES

8.1 If an Event of Default occurs (other than for Clause 7.7. Insolvency, when IGF shall not be required to provide notice), prior to the exercise of any remedy, IGF will give 10 Business Days notice to Client to remedy an Event of Default in relation to Payments and 15 Business Days to remedy any other Event of Default. If the Event of Default has not been remedied to the satisfaction of IGF, then, after the expiry of any applicable notice period or immediately if the Client is Insolvent under Clause 7.7, IGF may take any or all of the following actions:

i) treat any or all of each Lease, Loan and/or Other Financing as repudiated by Client and recover from Client all sums then due to IGF, plus a termination payment equal to all amounts which (but for termination) would have become due to IGF under each Lease, Loan and/or Other Financing during the remainder of the Term, discounted for early payment at the Discount Rate;

ii) take or recover possession of the Equipment; Client shall allow or procure access for IGF to any premises without notice to take possession of the Equipment and remove the same as the lawful owner of the Equipment. If IGF cannot take such possession Client shall pay to IGF the Fair Market Value of the Equipment;

iii) withdraw Client's right to use the Software;

iv) pursue any remedy at law or equity;

v) recover reasonable legal fees, costs and expenses incurred in exercising the above remedies; and

vi) decline to enter any further Lease, Loan or Other Financing.

9 GENERAL

9.1 Mutual Representations

9.1.1 Each Party represents and warrants to the other:

- i) that it has obtained the necessary internal and external approvals, consents and authorisations to enable it to enter into any Transaction Document; and
- ii) the signatories to any Transaction Document have the authority to bind the Party they represent and do so by their signature.

9.1.2 Each Party agrees that any Transaction Document incorporating the terms of this Agreement shall be a legally valid obligation and enforceable in accordance with its terms.

9.2 Exclusions

9.2.1 Neither Party shall be liable for any loss of business or consequential damage (indirect or other) arising from breach of this Agreement or any Transaction Document, except this shall not exclude any liability in respect of death or personal injury resulting from the negligence of either Party, its employees or agents. IGF shall not be liable for any claim, damages or loss arising from the Products.

9.3 Client Representations and Warranties

9.3.1 Client represents and warrants to IGF that:

- i) all representations made, and any information supplied (including those related to financial status, Products and prices) are true, accurate and complete; and
- ii) there exists no material default as to any other agreement, or material potential liability, legal or otherwise, which might impair its ability to comply with this Agreement or any Transaction Document.

9.4 Security

9.4.1 As a condition of making available the Amounts Financed, IGF may require security in respect of the Client's obligations, by way of a guarantee from a third party approved by IGF (in IGF standard form) or by adherence to additional conditions stated in a Transaction Document.

9.5 Assignment and Sublease

9.5.1 Client may not assign or novate this Agreement or any Transaction Document without IGF's prior written consent, which, subject to such assignment or novation being to a limited company having a satisfactory credit evaluation and being registered within the United Kingdom, shall not be unreasonably withheld. Client shall not sublease or otherwise dispose of a Product.

9.5.2 IGF may assign or otherwise transfer in whole or part:

- i) the Lease and/or Loans to any IBM Company but not otherwise, without the consent of Client,
- ii) the benefits of the Lease and/or Loans to any third party, or grant a security interest in the Equipment.

9.6 Notices

9.6.1 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 post, recorded delivery or registered post to the registered office of the other Party, addressed to the company secretary 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 48 hours from the date of other posting in the United Kingdom.

9.7 Waiver / Severability

9.7.1 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 or a Transaction Document, at any time. If any provision of this Agreement or any Transaction Document is or becomes illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions of this Agreement or any Transaction Document shall not be affected or impaired.

9.8 Benefit of Agreement (Third Party Rights)

9.8.1 No term of this Agreement or any Transaction Document is intended to confer a benefit on, or be enforceable by, any third party or person. The application of Contracts (Rights of Third Parties) Act 1999 is excluded in its entirety.

9.9 Further Assurance

9.9.1 Each Party will, at its own cost and expense, use all reasonable endeavours to do such further acts and execute such documents as may be necessary to give effect to the provisions of this Agreement or any Transaction Document.

9.10 Announcements and Publicity

9.10.1 Neither Party will make any public announcement relating to this Agreement or any Transaction Document, 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.

9.11 Accounting

9.11.1 Neither IBM Corporation, IGF nor any other IBM Company makes any representation whatsoever regarding Client's accounting treatment applicable to the charges for transactions under this Agreement or any Transaction Document. IBM Corporation accounts for equipment leasing and non equipment financing under US GAAP for US reporting purposes. Summary details of Lease and Loan transactions are available upon request.

9.12 Indemnity

9.12.1 Client agrees to indemnify IGF against any amounts of money ordered to be paid by IGF through legal proceedings in respect of third party claims, or settled by IGF with Client agreement, which arise in connection with this Agreement or any Transaction Document or from Client's possession and use of the Products, including all related liabilities, costs and reasonable legal and other expenses. This indemnity shall not apply to third party claims caused solely by IBM Company fault.

9.13 Business Contact Information and Data Privacy

9.13.1 Business Contact Information

Client agrees that IGF may process the business contact information of Client's employees and contractors and information about Client as a legal entity ("Contact Information") in connection with IGF's products and services or in furtherance of IGF's business relationship with Client. This Contact Information can be stored, disclosed internally and processed by any IBM Company and its business partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Client has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their Contact Information to IGF who will then comply with those requests.

9.13.2 Processing as part of this Agreement and/or any Transaction Document

Client agrees that any IBM Company, and the business partners and subcontractors identified in relation to this Agreement and/or any Transaction Document may process Contact Information wherever they do business solely in connection with this Agreement and/or any Transaction Document provided that these companies comply with applicable data privacy laws and of Client's data processing and security instructions related to this processing including any requests to access, update, correct or delete Contact Information.

9.13.3 Client authorises IGF to pass copies of this Agreement and any Transaction Documents, Certificates of Acceptance and other written authorisations to: i) IBM, ii) Suppliers, IBM Business Partners or other legal entities in the Product supply chain, and iii) any proposed or actual assignee.

9.13.4 Client agrees that IGF may:

- i) provide information about Client to fraud prevention agencies and that this information may be shared with other organisations; and
- ii) receive information about Client from fraud prevention agencies and use this information received from such agencies when deciding whether to extend credit and to prevent fraud. IGF agrees to provide to Client, upon Client written request, details of any fraud prevention agency to which IGF has passed or received information in relation to Client.

9.14 Soft copy

9.14.1 This Agreement or any Transaction Document may be sent to Client by IGF in soft copy format, such as a PDF file. Where Client has printed a Transaction Document for signature from such soft copy format, Client represents and warrants that no changes have been made to the text (including dates and charges).

9.15 Copies

9.15.1 Any copy of this Agreement and any Transaction Document made by reliable means (for example photocopy or facsimile) shall in all respects be considered equivalent to an original.

9.16 FLA Membership

9.16.1 IGF is a member of the Finance and Leasing Association ("FLA") and conforms to its Business Finance Code of Practice.

10 GOVERNING LAW

10.1 The Laws of England will apply to this Agreement and any Transaction Document executed hereunder and the Parties submit to the jurisdiction of the Courts in England.