

General Conditions

IBM Nederland Financieringen B.V.

General Conditions reference No.: General Lease and Financing Terms and Conditions dated 1 October 2009.

IBM Nederland Financieringen B.V., Johan Huizingalaan 765, 1066 VH Amsterdam, registration number in the commercial register: 33172336, may from time to time enter into Leases and Financings with Lessee. Such Transactions and any tender submitted for such Transaction shall be on and subject to the terms and conditions of the applicable Transaction Document incorporating the General Conditions.

1. Definitions

“Agreement” means, with respect to a Transaction Document, the Transaction Document executed by the Parties as such Transaction Document incorporates the terms of this General Conditions, as each may be amended, modified, or supplemented from time to time in writing, and the COA if required;

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

“Amount Funded” means the amount, if specified by Lessor, as the “Amount Funded” in the Transaction Document as may be amended by the COA;

“Assignment” means the assignment of any rights and/or obligations under a Transaction Document from one Entity to another;

“Average Rent” means, as with respect to any Term, the average amount of Rent, calculated on a per-month basis, payable to Lessor with respect to such Equipment during the immediately preceding Term;

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

“Certificate of Acceptance” or **“COA”** means a certificate in a form acceptable to Lessor, and signed by Lessee, denoting Lessee’s acceptance of the Products following delivery and authorizing Lessor to pay Supplier;

“Commencement Date” means the date a Transaction commences in accordance with Section 5;

“Conditions Precedent” means, with respect to the effectiveness of a Transaction, all statements, certificates, documents, instruments, and additional terms and conditions required by Lessor under the General Conditions and the applicable Transaction Document to be provided or satisfied on or prior to the Commencement Date, unless such “Condition Precedent” is waived in writing by Lessor;

“Default” means an Event of Default or any event that upon notice or lapse of time or both would constitute an Event of Default under the Agreement;

“End of Lease Date” means the date that the Term of the Lease expires or terminates;

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

“End of Lease Purchase Option” means, if applicable, an option for Lessee to purchase the Equipment at the end of the Lease at a purchase price which shall be equal to either:

- a. the amount or the percentage of the “Amount Funded” specified by Lessor, or
- b. the Fair Market Value of such item of 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 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, conversions, upgrades, elements, or accessories, or any combination thereof or any other item of equipment that is specified on the Lease table of the Transaction Document, which is leased by Lessor to Lessee hereunder;

“Event of Default” means any of the events specified in Section 18 as an Event of Default;

“Fair Market Value” or **“FMV”** means, with respect to an item of Equipment, the fair market value at a certain moment 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;

“Financed Product” means any product, service, or other item specified on the Financing table of the Transaction Document, which is financed by a Financing hereunder;

“Financing” means a financing by Lessor to Lessee, the proceeds of which are paid by Lessor to Supplier, or paid to Lessee as reimbursement of its payment to Supplier with Lessor’s prior written consent, to finance Lessee’s acquisition of Product;

“General Conditions” means these General Lease and Financing Terms and Conditions dated 1 October 2009, as the same may be amended or modified from time to time, and applicable on any offer for Lease and/or Financing by IBM Nederland Financieringen B.V. or on any Transaction entered into on or after 1 October 2009;

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“**Guarantor**” means an Entity providing a guarantee of Lessee’s obligations arising under the 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 Transaction Document beginning with the initial Payment Period;

“**Initial Term**” means the term of the Transaction commencing on the Commencement Date and expiring at the end of the Initial Payment Term;

“**Lease**” means a lease of Equipment under the Lease table of the Transaction Document;

“**Lessee**” means, with respect to a Transaction Document, the Entity that signs the Transaction Document as Lessee. With respect to any Lease, “Lessee” shall mean the Lessee in its capacity as a lessee. With respect to any Financing, “Lessee” shall mean Lessee in its capacity as recipient of such Financing;

“**Lessor**” means IBM Nederland Financieringen B.V.. With respect to any Lease, “Lessor” shall mean IBM Nederland Financieringen B.V. in its capacity as a Lessor. With respect to any Financing, “Lessor” shall mean IBM Nederland Financieringen B.V. in its capacity as provider of such Financing;

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

“**Part**” means any original component or element of the 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 Period**” means the period specified in a Transaction Document as the “Payment Period” and is the payment frequency (e.g. Month, Quarter) for which each Periodic Payment is due;

“**Payment(s)**” means the amount(s) payable as Periodic Payment(s), together with any other amounts payable under the Agreement;

“**Periodic Payments**” means the Payments payable as Rent for Leases and Repayment for Financing hereunder, as specified in a Transaction Document;

“**Planned Commencement Month**” means the month indicated on the Transaction Document as the “Planned Commencement Month”;

“**Product(s)**” means any item described under the “Product Description” column of the Transaction Document;

“**Program License**” means a license of software that is specified as a separate item on the Financing table of a Transaction Document, which is financed by Lessor to Lessee hereunder;

“**Renewal Term**” means the term of a Lease, agreed to in writing by the Parties, consisting of a number of consecutive Payment Periods which commence on the day immediately following the last day of the preceding Term of such Lease and expire 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 Transaction Document 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; Rent for the Initial Term is the amount specified in the Transaction Document as “Rent” or is otherwise included in the “Total Periodic Payment”;

“**Repayments**” means the amount specified on the Transaction Document as “Repayment” or otherwise included in the “Total Periodic Payment” on the Transaction Document, which amount consists of principal and finance charges for the Financing and is due and payable each Payment Period for the number of Payment Periods specified on the Transaction Document;

“**Supplier**” means the entity supplying Product under a Supply Agreement;

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

“**Term**” means, with respect to a Lease, the Initial Term, any Renewal Term, or the term of any automatic extension under Section 15.1, as applicable;

“**Transaction**” means the Lease and/or Financing indicated in the Transaction Document between Lessor and Lessee;

“**Transaction Document**” means the document that contains details of a Transaction and incorporates the terms of the General Conditions by reference when executed by the Lessee and accepted by Lessor;

“**Validity Date**” means the date specified by Lessor in a Transaction Document as the “Validity Date”.

2. Agreement Structure

2.1 The General Conditions, the Transaction Document, the COA, and any applicable attachments, amendments or addenda, are the complete and exclusive agreement between the Parties regarding a Transaction, and replace any prior oral or written communications between the Parties relating to such Transaction.

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;
- b. attachments to the Transaction Document;
- c. the Transaction Document;

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- d. attachments to the General Conditions; and
- e. the General Conditions.

- 2.3 Lessee may, upon consent of Lessor, enter into Transaction Documents incorporating in full the applicable terms and conditions set out in the General Conditions. Each Transaction Document shall form a separate agreement.
- 2.4 Lessor may, with at least three months prior written notice to Lessee, change the terms and conditions of the General Conditions. Such changes will apply only to Transactions that begin after the effective date specified in the notice, and only if Lessee does not notify Lessor that it does not agree to the changes. No other change to these General Conditions will be binding on the Parties unless agreed to in writing by Lessor and Lessee.
- 2.5 Each Lease or Financing is effective when the Transaction Document containing such Lease or Financing is executed by the Parties thereto.
- 2.6 Lessee agrees that any Transaction initiated shall be binding upon Lessee's successor and permitted assigns.

3. Payment and Taxes

- 3.1 The initial Payment Period for either a Lease or a Financing shall begin on the first day of the month following the Commencement Date. For each Transaction, Lessee agrees to pay the Periodic Payments in the amounts and on the due dates specified in the Transaction Document, and to pay such other Payments as they may become due and payable as stated in the Transaction Document and hereunder. Lessee will pay each Payment to the address specified in the invoice sent by Lessor to Lessee or elsewhere as otherwise instructed by Lessor. If any Payment is due on a non-Business Day, then such Payment shall become due and payable on the next Business Day. Time shall be of the essence in relation to Payments.
- 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%) per month of the unpaid Payment or any part thereof that remains unpaid ("Unpaid Amount") from the due date until the actual date such Unpaid Amount is paid in full, subject to maximum limitations by applicable law (the "Late Payment Fee").
- 3.3 Upon the Commencement Date, Lessee agrees that Lessee's obligations under the Agreement become irrevocable and independent of acceptance of the Product, and Lessee's obligation to make all Payments when due, in full, 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 Payments received by Lessor will be applied in the following order: first to Late Payment Fees, second to overdue Periodic Payments, and third to other Payments.
- 3.5 Lessee is responsible for any taxes, duties and charges arising in respect of a Transaction and/or Equipment, 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. When Lessee is established outside the Netherlands, Lessee pays to Lessor the agreed full Periodic Payments amount (gross amount) as specified in the Transaction Document without any deductions of possible withholding taxes.

4. Supplier

4.1 Rights and Obligations

For each Product under Lease, Lessee represents that it has the right to assign to Lessor and hereby assigns to Lessor, effective upon signing the Transaction Document 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 Equipment shall remain with Lessee. As between Lessor and Lessee, the rights and obligations of Lessee in relation to a Transaction are set out exclusively in the Agreement. Nothing in the Agreement shall affect any remedies Lessee may have against the Supplier, the Licensor or the manufacturer of the Equipment. Lessee shall make any claim solely against the Supplier, the Equipment manufacturer 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 non-exclusive benefit of any applicable warranties of 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 if otherwise agreed with the Supplier. The aforementioned authorization shall not detract from Lessor's rights in relation to the Equipment or Program License.

5. Commencement

- 5.1 The Transaction will commence on the Commencement Date provided that:
 - a. the Lessee executed Transaction Document is received by Lessor by the Validity Date and accepted by Lessor;
 - b. the Commencement Date occurs by the end of the "Planned Commencement Month" indicated on the Transaction Document; and
 - c. no Default is continuing on such Commencement Date and Lessee has satisfied all the Conditions Precedent hereunder.

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5.2 Provided that the conditions in Section 5.1 above have been satisfied, the Commencement Date for a Lease will occur as follows:

- a. for Products supplied directly by IBM, the shipment date of such leased Product(s), unless Lessee notifies Lessor in writing of its rejection of the Lease for the Product within ten (10) days of such shipment date; and
- b. for any other leased Products, the date specified on a duly executed Certificate of Acceptance, provided that such Certificate of Acceptance is returned to Lessor within ten (10) days of Lessee's receipt of the Products.

5.3 Provided that the conditions in Section 5.1 above have been satisfied and provided Lessee has authorized Lessor to pay the Supplier either by providing as applicable a copy of the Supplier's invoice with the written words "Approved for Payment", duly executed by Lessee and received by Lessor on or before the Validity Date, or a duly executed COA, or a notice in a form mutually acceptable to both Parties, the Commencement Date for a Financing will be the date Lessor pays the Supplier or Lessee or otherwise funds the Financing as agreed to in writing by the Parties.

If any of the foregoing conditions in this Section are not satisfied, Lessor shall have no obligation or liability with respect to the Transaction. However, Lessor, in its sole discretion, may commence the Transaction or offer a new Transaction to Lessee.

6. Ownership

6.1 For each Equipment under Lease, Lessor is the owner of the Equipment and Lessee shall have no right, title or interest therein except as specified hereunder. 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, 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. 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 the 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 finances the Financed Product "as is".

6.3 For each item of Equipment financed by a Financing, Lessee is the owner of such Equipment.

7. Quiet Enjoyment

7.1 During the Term of the Lease, Lessor covenants to Lessee that Lessor will not interfere with Lessee's quiet enjoyment of the Equipment so long as no Event of Default by Lessee or anyone acting or claiming through Lessee 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 If requested by Lessor, 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. Lessee will, upon request by Lessor, affix identifying labels, plates or tags to Equipment or Part(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 in a proper environment as defined by the manufacturer and/or Supplier and in compliance with all applicable laws and regulations. Products will be used primarily by Lessee for its business purposes and not for personal, family or household purposes. As it relates to any software, embedded or otherwise, Lessee agrees to comply with the terms of the software license and the Agreement.

11. Insurance

11.1 Lessor will maintain, at its own expense, insurance covering loss of or damage to Equipment under Lease on or after the Transaction Commencement Date (which excludes any Parts or Alterations to such Equipment not subject to a Lease under the Agreement) with a EURO 25,000 deductible per occurrence. If the Equipment is lost, stolen, destroyed or irreparably damaged for any cause whatsoever ("Property Loss"), Lessee shall promptly inform Lessor. To claim a Property Loss, Lessee must file a police or fire department report or other appropriate documentation substantiating the Property Loss. If Lessor determines that the Equipment can be economically repaired, Lessee shall place the Equipment in good condition and working order and Lessor will promptly reimburse Lessee the reasonable cost of such repair, less the deductible. If not so repairable, Lessee shall pay Lessor the lesser of EURO 25,000 or the FMV of the Equipment immediately prior to the Property Loss. Upon Lessor's receipt of payment, the Lease with respect to that Equipment shall terminate and Lessee's obligation to pay Rent for such Equipment will be deemed to have ceased as of the date of the Property Loss. For purposes of this Section Lessor will consider the manufacturer's charge for such repair to be the reasonable cost of repair.

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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 Equipment manufacturer or its authorized service provider utilizing the manufacturer's genuine parts. In the event Lessor leases an Alteration, Lessor authorizes the return to the Equipment manufacturer of any Part(s) removed from Lessor's leased Equipment as a result of such Alteration provided by the Equipment manufacturer or its authorized service provider utilizing the manufacturer's genuine parts;
- b. prior to return to Lessor, Lessee shall remove any Alterations not owned by Lessor and restore Equipment to its original condition using any removed Lessor owned Part(s);
- c. 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, an amount equal to any diminution in value of Equipment or the cost to restore 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;
- d. all Parts or Alterations not owned by Lessor that are not removed before the 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. Transactions for Alterations

13.1 Upon Lessee's request, Lessor may agree to offer to Lessee a Transaction for new or used Alterations, which are or have been offered for sale by the Equipment manufacturer and which contains no Part which has been changed or altered since its original manufacture. Transactions for Alterations will be at then current terms and conditions and must be coterminous with the Transaction 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 If Lessee is not in Default, then Lessee may relocate a Product 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 Product. Notwithstanding the foregoing, Lessee may relocate Equipment which 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 the original Equipment location.

14.2 Lessee may not sublease any a item of Equipment or make an Assignment without Lessor's prior written consent. No sublease or Assignment 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 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. Lessee shall not assign, lend, part with possession of, grant use of, sublease or relocate any Equipment other than as expressly permitted under the Agreement. Any sublease, relocation or assignment of Equipment 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.

14.4 Lessor may assign or otherwise transfer in whole or part its right, title and interest in any Transaction or Equipment 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.

15. End of Lease Options

15.1 At the end of any Term of the Lease, Lessee may select one of the options described below or as detailed in the Transaction Document 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 Term of the Lease will automatically continue on a month to month basis. Such Lease will continue under the same terms and conditions and at the last Rent Payment from the immediately preceding Term on a monthly basis greater than zero (but not less than the applicable Average Rent) 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 its end of Lease option as described herein. "**Average Rent**" means, as with respect to any Term, the average amount of Rent, calculated on a per-month basis, payable to Lessor with respect to such Equipment during the immediately preceding Term.

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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 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 each 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. In the event Lessee provides its End of Lease Notice in accordance with Section 15.1 selecting this option but fails to return the Equipment on or prior to the applicable End of Lease Date or 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 to Lessor in accordance with Section 15.1 until 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, Lessee may elect to purchase the Equipment provided the Equipment has been installed and in Lease for at least twelve (12) consecutive months. 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 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

16.1 Upon expiration, termination or cancellation of the Lease, the Equipment 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 its 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. Financing

17.1 Lessor, in its capacity as the provider of a Financing ("IGF"), and Lessee, in its capacity as the recipient of a Financing ("Client"), may, from time to time, enter into Financing on the terms and subject to the conditions of the applicable Transaction Document incorporating the General Conditions. For each Financing, Client agrees to pay Repayments in the amounts and on the due dates specified in the Agreement, and to pay such other Payments as they may become due and payable hereunder. For purposes of each Financing, as the context requires, any references in Section 2., Section 3., Section 18., Section 19., and Section 20., and in the Transaction Document to Lessor and Lessee, shall be deemed to be references to IGF and Client, respectively. Client may not make any Assignment of any Financing.

17.2 If Lessee wishes to prepay the Financing, Lessee must give Lessor one (1) month's prior written notice and Lessee must pay all amounts then due and to become due under the Financing.

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 when due under the Agreement and such failure continues for a period of seven (7) days;
- b. Lessee fails to perform or breaches any obligation under the 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 Product or a Part, or makes an Assignment in violation of the terms of the Agreement;
- e. any guarantee of a Transaction 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 defaults under any Transaction 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 any and all Transactions and declare all amounts then due and to become due immediately due and payable, including any applicable End of Lease Purchase Option for each Equipment not returned to Lessor by Lessee; provided, however, that following the occurrence of an Event of Default pursuant to Section 18.1(f), all Transactions shall automatically terminate and all amounts then due and to become due shall automatically become immediately due and payable, without notice;
- b. take or recover immediate possession of each item of Equipment under any Transaction 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, without any liability for this action;
- c. require Lessee to terminate use of any Program License or any software license, or request Licensor to terminate Lessee's right to use such licenses;
- d. pursue any remedy at law or equity.

No right or remedy is exclusive of any other provided herein or permitted by law or equity; 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 the Agreement.

20. General**20.1 Exclusions**

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 Periodic Payments, taxes or any other payment obligations (including without limitation, Lessee's indemnity obligations) under the 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 an 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 (including those related to financial status, Products and prices) 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 will be located, with full legal and organizational power to enter into this Agreement;

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- 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 Transaction Document and accepts responsibility for its use and the results obtained therefrom.

20.3 Security

As a condition of entering into a Transaction, Lessor may require security with respect to Lessee's obligations as specified in the Transaction Document, 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 the Agreement and commencement of any Lease or Financing under the Agreement. Lessee's obligations under the Agreement, which by their nature would continue beyond the expiration of the Agreement, will survive the expiration or termination of such 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 received, if personally or by recorded delivery, at the time of delivery, or within three (3) 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 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 the 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 the Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions of the 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 the 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 the Agreement.

20.9 Announcements and Publicity

Neither Party will make any public announcement relating to the 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 Lessor makes any representation whatsoever regarding Lessee's accounting treatment applicable to the Agreement. IBM accounts for the Agreement under local accounting standards and under U.S. 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 the 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 Data Privacy

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

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

"Business Contact Personnel" means the Lessee employees and contractors to whom the Business Contact Information relates.

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“**Data Protection Authority**” means the ‘College Bescherming Persoonsgegevens’ (CBP) established by the Wet Bescherming Persoonsgegevens (WBP) pursuant art 51 of this legislation.

“**Data Protection & Electronic Communications Legislation**” means the Wet Bescherming Persoonsgegevens (WBP) and the Telecommunicatiewet, including (in either case) the various statutory instruments made there under and any statutory replacement or modification thereof.

“**IBM Group**” means International Business Machines Corporation of Armonk, New York, USA, its subsidiaries, and their respective ‘**IBM Business Partners**’ and subcontractors. IBM Group entities are principally providers of information technology, including hardware and software products, services, consultancy, financing services and other related activities.

Lessee authorizes Lessor to process and use Business Contact Information for the purpose of furthering the business relationship between Lessee and IBM Group, including the marketing and selling of its products and services (the “**Specified Purpose**”).

Lessee agrees that Business Contact Information may be disclosed to, and processed and used by, IBM Group in pursuit of the Specified Purpose.

Lessor agrees that all Business Contact Information will be processed in accordance with the applicable Data Protection & Electronic Communications Legislation and will be used only in accordance with the Specified Purpose.

To the extent that the Data Protection & Electronic Communications Legislation requires them, Lessee represents that it has obtained (or will obtain) such consents from and has issued (or will issue) such notices to, the Business Contact Personnel as are necessary in order to enable the IBM Group to process and use the Business Contact Information to contact them, including by email, in accordance with the Specified Purpose.

Lessee consents to Lessor transferring Business Contact Information outside the European Economic Area, provided that any such transfer is made on contractual terms approved by the Data Protection Authority as ensuring adequate safeguards for the rights and freedoms of data subjects.

Lessee further agrees to:

- a. allow Lessor to provide details of the Agreement to Suppliers or IBM Business Partners with whom Lessee has a supply relationship in any country where IBM does business;
- b. allow Lessor to provide account information with respect to Lessee to credit reporting agencies; and
- c. allow Lessor to provide details of the Agreement and Lessee to investors, insurers and assignees and potential investors, insurers and assignees.

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 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 direct debit, Lessee shall execute the applicable documentation to effect such direct debit arrangement.

20.15 Copies

Any Transaction Document, 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 Transaction Document 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 Counterparts

Any Transaction Document, 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.

20.17 Lessor’s Payment

If Lessee fails to pay taxes as required under the 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 the 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.

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21. Governing Law

- 21.1 The Agreement will be governed by, and construed in accordance with the laws of the Netherlands and the Parties submit to the jurisdiction of the courts of Amsterdam, the Netherlands.