



**FOURTH SCHEDULE
SERVICES AGREEMENT**

DATED

2016

(1) **[SUPPLIER]**

(2) **[END USER]**

**FRAMEWORK AGREEMENT for the provision of
Multifunctional Devices and Associated Print
Services and Supplies**

CPC/DU/MFD/02

THIS AGREEMENT is dated

2016

PARTIES:

(1) [●] of [●] (the “**Supplier**”); and

(2) [END USER] of [●] (the “**End User**”).

(together the “**Parties**”, and “**Party**” shall be construed accordingly).

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

“ Agreement ”	:	this agreement for the supply of services, as amended from time to time in accordance with its terms;
“ Business Day ”	:	a day other than a Saturday, Sunday or public holiday in England;
“ Charges ”	:	the charges payable by the End User to the Supplier and outlined in schedule 2 of this Agreement;
“ Documentation ”	:	the documentation provided to the End User as outlined in Schedule 1;
“ Hardware ”	:	the hardware provided to the End User as part of the Managed Print Service as outlined in Schedule 1;
“ Installation Date ”	:	such date as is mutually agreed between the Supplier and the End User on which the Hardware shall be installed;
“ Managed Print Service ”	:	the system which manages the printing document and data needs of the End User outlined in Schedule 1 of this Agreement;
“ Personal Data ”	:	data subject to protection under Data Protection Law in any jurisdiction;
“ Quarter ”	:	each period of three calendar months (for each year, Quarter 1 runs from 1 August- 31 October, /Quarter 2 runs from 1 November – 31 January, Quarter 3 runs from 1 February – 30 April and Quarter 4 runs from 1 May to 31 July).
“ Response Time ”	:	the time from the End User first logging a call with the Supplier, to the arrival on site of an

engineer at the Site.

Services		such services as are procured independent of the Managed Print Service and outlined in Schedule 4 of this Agreement
“Site”	:	the location or locations at which the Managed Print Service is to be installed and the services performed by the Supplier on behalf of the End User”;
“Software”	:	all computer programmes, drivers and applications necessary to ensure that the Hardware operates effectively as outlined in Schedule 1;
“Specification”	:	the specification outlined in Schedule 3;

2. INTRODUCTION

2.1 This Agreement sets out the services to be provided to the End User by the Supplier.

3. DURATION

3.1 This Agreement will be available to the End User for a period agreed in writing between the Parties.

4. MANAGED PRINT SERVICE OR SERVICES

4.1 The Supplier shall provide a good quality Managed Print Service or Services to the End User’s specification and satisfaction in accordance with this Agreement.

4.2 The Managed Print Service or Services shall be available to the End User between the hours of 08:30 and 17:00 Monday to Friday, excluding bank holidays.

4.3 Where there is a requirement for an extension of the hours referred to in clause 4.2 of this Agreement, the extension shall be agreed in writing between the Parties and the Supplier shall be entitled to charge the End User an additional fee in respect of the additional service in addition to the Charges.

5. TRAINING

5.1 Training shall be delivered to the End User by the Supplier or its agent at the Site within a reasonable time following the Installation Date.

5.2 Certain individuals of the End User may be designated “Super Users” to be provided with enhanced training enabling such individuals to train other users of the Hardware at the Site. Such requirement shall be agreed in writing between the Parties.

5.3 The End User may request additional training by the Supplier. The Supplier shall have the right to charge an additional fee for such training in addition to the Charges.

6. STAFF

- 6.1 The Parties shall ensure that one principal relationship manager is appointed for each Party. Any correspondence in respect of the Managed Print Service or Services and this Agreement shall be between such relationship managers. Any changes to the relationship managers shall be clearly communicated.
- 6.2 The Supplier will always inform the End User's relationship manager before making any visit to the Site (other than for breakdown calls by service engineers).
- 6.3 The staff engaged by the Supplier to deliver the Managed Print Service or Services to the End User will be fully trained and will have direct access to the manufacturer's current technical manuals and support services.
- 6.4 The Supplier shall ensure that the staff engaged by the Supplier to deliver the Managed Print Service or Services to the End User will be security vetted and approved to the Criminal Records Bureau's relevant standard or similar.
- 6.5 Where any transfers of staff from the Supplier to the End User or from the End User to the Supplier are required, any Transfer of Undertakings (Protection of Employment) Regulations (**TUPE**) requirements shall be met by the transferring Party.
- 6.6 The transferring Party shall be under no obligation to offer continuing employment to any staff once transferred to the receiving Party in accordance with TUPE. The receiving Party shall either continue the employment of the transferred staff or otherwise procure the termination of the transferred staff.
- 6.7 Where TUPE applies and prior to the commencement of employment of any staff with the receiving Party, the transferring Party shall provide to the receiving Party full and accurate details of each employee together with any other information which the receiving Party may reasonably require relating to each transferring employee.
- 6.8 The receiving Party shall discharge and indemnify and keep indemnified the transferring Party against all losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities (including without limitation any liability to tax) and expenses which the Supplier may suffer, sustain, incur, pay arising from any act or omission of the receiving Party in relation to any transfer of staff from the transferring Party to the receiving Party pursuant to TUPE.
- 6.9 The receiving Party shall indemnify and keep indemnified the transferring Party for any redundancy or termination of employment of any staff that have been transferred from the transferring Party to the receiving Party pursuant to TUPE.
- 6.10 In connection with a relevant transfer to which the Employment Regulations apply, the Parties agree that:

The transferring Party shall perform and discharge all its obligations in respect of all the transferring employees and their representatives for its own account up to and including the date of transfer. The transferring Party shall indemnify receiving Party in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by receiving including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

(a) the transferring Party's failure to perform and discharge any such obligation;

(b) any act or omission by the transferring Party on or before the date of transfer or any other matter, event or circumstance occurring before the date of transfer;

(c) all and any claims in respect of all emoluments and outgoings in relation to the transferring employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the date of transfer;

(d) any claim made by or in respect of any person employed or formerly employed by the transferring Party (Claims)

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The intellectual property rights in the Hardware, Software, Services and Documentation are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence over such intellectual property rights to any other party or parties.

7.2 The End User shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to perfect the intellectual property rights of the Hardware, Software, Services and the Documentation.

7.3 The End User shall use its best endeavours to prevent any infringement of the Supplier's intellectual property rights in the Software and shall immediately report to the Supplier any such infringement that comes to its attention. In particular, the End User shall:

7.3.1 ensure, before starting to use the Software, is made aware that the intellectual property rights of the Software are proprietary to the Supplier and that it may only be used and copied in accordance with this Agreement; and

7.3.2 implement suitable disciplinary procedures for employees (of the End User) who make unauthorised use or copies of the Software; and

7.3.3 not permit third parties to have access to the Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Software.

8. TITLE, RISK AND INSURANCE

8.1 The Managed Print Service shall at all times remain the property of the Supplier, and the End User shall have no right, title or interest in or to the Managed Print Service (save the right to possession and use of the Managed Print Service subject to the terms and conditions of this Agreement).

8.2 The risk of loss, theft, damage or destruction of the Hardware, Software and all other elements/items provided as part of the Managed Print Service or Services shall pass to the End User on Delivery. The Hardware shall remain at the sole risk of the End

User during the term of this Agreement and any further term during which the Hardware is in the possession, custody or control of the End User (the “**Risk Period**”) until such time as the Hardware is redelivered to the Supplier. During the term of this Agreement and the Risk Period, the End User shall, at its own expense, obtain and maintain the following insurances:

- 8.2.1 insurance of the Hardware to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - 8.2.2 insurance for such amounts as a prudent owner or operator of the Hardware would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Hardware; and
 - 8.2.3 insurance against such other or further risks relating to the Hardware as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the End User.
- 8.3 All insurance policies procured by the End User shall be endorsed to provide the Supplier with at least 30 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Hardware. The End User shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 8.4 The End User shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Hardware arising out of or in connection with the End User's possession or use of the Hardware.
- 8.5 If the End User fails to effect or maintain any of the insurances required under this agreement, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the End User.
- 8.6 The End User shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

9. SUPPLY OF THE MANAGED PRINT SERVICE OR SERVICES

- 9.1 The Supplier shall supply, and the End User shall use the Managed Print Service or Services and pay the Charges, in accordance with the terms and conditions of this Agreement.
- 9.2 Risk in the Hardware, Documentation, Software and all other elements provided as part of the Managed Print Service or Services shall pass to the End User on Delivery.
- 9.3 If the Supplier fails to supply any part of the Managed Print Service or Services the End User may pay another person to supply part or all of the Managed Print Service or Services and the costs incurred may be deducted from the Charges or shall be recoverable as a debt. Suppliers will be given 10 Business Days to correct any failure to supply (either in part, or all) prior to the End User be able to action the rights under this clause 9.3 to pay another person to supply part or all of the Managed Print Service or Services.

10. DELIVERY AND INSTALLATION

- 10.1 The Hardware and Software shall be configured, connected and commissioned by the Supplier within 48 hours of delivery to the Site, unless otherwise agreed in writing between the Parties. The Documentation shall be delivered to the End User at the same time as the Hardware and Software.
- 10.2 The Managed Print Service shall commence immediately upon satisfaction of clause 10.1 above, unless otherwise agreed in writing between the Parties.

11. MAINTENANCE AND BREAKDOWN RESPONSE TIME

- 11.1 The Supplier shall strive to provide to the End User a standard hardware fault breakdown service Response Time of 4 working hours and a fix time of 2 working hours.
- 11.2 The Parties may agree an enhanced hardware fault breakdown service response time (of 2 hours from reporting to fix) or a basic hardware fault breakdown service response time (of 6 hours from reporting to fix) or such other variation as agreed by both parties. Such alterations to the Response Time and fix time shall be agreed in writing between the Parties and the Supplier shall be entitled to charge the End User an amended fee to the Charges.
- 11.3 Where the Hardware experiences a fault for over 24 hours continuously, the Supplier shall provide a loan to the End User commencing within a 72-hour period and continuing until the Hardware is fully operational.
- 11.4 The Supplier shall respond to documented complaints by the End User within two working days of Notice being received. Upon receiving the response, the End User remaining unsatisfied, shall be entitled to escalate the complaint by documenting such complaint to the national account manager of the Supplier. The national account manager will endeavour to resolve the matter within five working days from receipt of such complaint.
- 11.5 The Managed Print Service shall allow the End User in respect of a hardware fault to:
 - 11.5.1 benefit from the Managed Print Service for the duration of this Agreement;
 - 11.5.2 log support calls with a help desk by email, by telephone or by postal service;
 - 11.5.3 log support calls through automated email alerts direct from the Hardware where this facility has been authorised by the End User;
 - 11.5.4 receive telephone support in respect of any fault or query;
 - 11.5.5 receive remote support via the network where this facility has been authorised by the End User;
 - 11.5.6 receive at the Site a suitably qualified engineer to address a fault, where deemed necessary by the Supplier.

- 11.6 The Parties may agree in writing additional services to be provided outside the scope of this Agreement and the Supplier shall be entitled to charge an additional fee to the End User in addition to the Charges.

12. REPLACEMENT

- 12.1 The Supplier shall provide a replacement of the Hardware, or any part of it, on a like for like basis and within 10 working days upon notice being received by the Supplier, where:
- 12.1.1 the Hardware has required 4 breakdown calls in one Quarter for the same fault which has resulted in the Hardware failing to produce print and/or copy;
 - 12.1.2 Hardware producing coloured print has become incapable of achieving the reference standard, in comparison with the sample images provided to the End User;
 - 12.1.3 Hardware producing mono print has become incapable of achieving the reference standard, in comparison with the sample images provided to the End User; and
 - 12.1.4 the Hardware is not fit for purpose.

13. END USER'S RESPONSIBILITIES

- 13.1 The End User shall during the term of this Agreement:
- 13.1.1 ensure that the Hardware is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by competent staff in accordance with any operating instructions provided by the Supplier;
 - 13.1.2 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Hardware is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 13.1.3 maintain at its own expense the Hardware in good and substantial repair in order to keep it in as good an operating condition as it was on the Installation Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Hardware;
 - 13.1.4 make no alteration to the Hardware and shall not remove any component from the Hardware without the prior written consent of the Supplier unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component is replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Hardware shall continue to vest in the Supplier immediately upon installation;
 - 13.1.5 keep the Supplier fully informed of all material matters relating to the Hardware;

- 13.1.6 keep the Hardware at all times at the Site and shall not move or attempt to move any part of the Hardware to any other location without the Supplier's prior written consent;
 - 13.1.7 permit the Supplier or its duly authorised representative to inspect the Hardware at all reasonable times and for such purpose to enter upon the Site or any premises at which the Hardware may be located, and shall grant reasonable access and facilities for such inspection;
 - 13.1.8 not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - 13.1.9 not, without the prior written consent of the Supplier, attach the Hardware to any land or building so as to cause the Hardware to become a permanent or immovable fixture on such land or building. If the Hardware does become affixed to any land or building then the Hardware must be capable of being removed without material injury to such land or building and the End User shall repair and make good any damage caused by the affixation or removal of the Hardware from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
 - 13.1.10 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Hardware and, where the Hardware has become affixed to any land or building, the End User must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Hardware both during the term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Hardware and a right for the Supplier to enter onto such land or building to remove the Hardware;
 - 13.1.11 not suffer or permit the Hardware to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Hardware is so confiscated, seized or taken, the End User shall notify the Supplier and the End User shall at its sole expense use its best endeavours to procure an immediate release of the Hardware and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 13.1.12 not use the Managed Print Service for any unlawful purpose;
 - 13.1.13 ensure that at all times the Managed Print Service remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Hardware; and
 - 13.1.14 not do or permit to be done anything which could invalidate the insurances referred to in clause 8.
- 13.2 The End User acknowledges that the Supplier shall not be responsible for any loss of or damage to the Hardware arising out of or in connection with any negligence, misuse, mishandling of the Hardware or otherwise caused by the End User or its officers, employees, agents and contractors, and the End User undertakes to

indemnify the Supplier on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the End User to comply with the terms of this Agreement.

14. SOFTWARE AND DOCUMENTATION

- 14.1 The Supplier grants to the End User the non-exclusive, non-transferable right to use the Software, Documentation and the Hardware.
- 14.2 The Supplier shall obtain all necessary licences, permissions and consents required to enable it to supply the Software and Documentation to the End User for use and operation.
- 14.3 The Software may be used only by End Users at the Sites except as follows:
 - 14.3.1 the Software may be used on any replacement for all or any part of the computer Hardware; if the End User transfers the whole of the business permanently to another site, the Software may be used at the new site by the End User, provided that the Supplier is informed in writing of the change of site before use of the Software commences at the new site;
 - 14.3.2 if the computer Hardware becomes inoperable for any reason, the Software may be temporarily used, if possible, on backup equipment until the computer Hardware is repaired, and the End User may use the Software for the purpose of testing whether any such backup equipment is suitable for use while the computer Hardware is inoperable; and
 - 14.3.3 if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Software may be used at an alternative site until the Site is again usable, provided that the End User gives the Supplier notice of such alternative site and permits the Supplier to inspect such site once the Software is again in use at the Site to ensure that no copy of all or any part of the Software remains at the temporary site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's confidential information before the Software is transferred to the alternative site.
- 14.4 The End User shall comply with the any third party licences and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the End User's breach of such terms howsoever arising.
- 14.5 The Supplier may treat the End User's breach of any third party licence as a breach of this Agreement.

15. LICENCES

- 15.1 The Supplier shall obtain all necessary licences, permissions and consents required to enable it to supply the Hardware, the Software and Documentation to the End User for the Hardware's use and operation.
- 15.2 The Supplier shall produce copies of such licences, permissions and consents to the End User upon request.
- 15.3 The End User shall procure the correct number of licences from the Supplier required for the Hardware's use and operation.

16. WARRANTY

- 16.1 The Supplier warrants that the Hardware, the Managed Print Service and/or the Services shall be of satisfactory quality and fit for the purpose held out by the Supplier. The Supplier shall use all reasonable endeavours to remedy, [free of charge], any defect in the Hardware or Software which manifests itself during the term of this Agreement within 10 Business Days of being notified by the End User of any Defect, provided that:
- 16.1.1 the End User notifies the Supplier of any defect in writing within 10 Business Days of becoming aware of the defect;
 - 16.1.2 the Supplier is permitted to make a full examination of the alleged defect;
 - 16.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
 - 16.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the End User or on its behalf; and
 - 16.1.5 the defect is directly attributable to defective material, workmanship or design.
- 16.2 Insofar as the Hardware comprises or contains equipment or components which were not manufactured or produced by the Supplier, the End User shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer.
- 16.3 If the Supplier fails to remedy any defect in accordance with clause 16.1, this Agreement shall be deemed breached and the End User, at its sole discretion, shall have the right to recover damages and terminate this Agreement in accordance with clause 23 of this Agreement.
- 16.4 In the event of a breach of the Agreement in accordance with clause 16.3, the Supplier shall, at the End User's request, accept the return of part or all of the Managed Print Service and/or Hardware and make an appropriate reduction to the Charges payable during the remaining term of the Agreement.

17. INVOICING

- 17.1 The Supplier or its assignees shall invoice the End User each Quarter in arrears in accordance with the Charges.
- 17.2 Payment shall be made by the End User to the Supplier either by cheque or BACS.
- 17.3 Payment terms shall be 30 days from the date the Supplier issued the invoice to the End User.
- 17.4 Invoices shall be paid in full in pounds sterling.
- 17.5 The End User shall be responsible for any costs incurred by the Supplier in recovering monies owed to the Supplier, together with interest on all overdue amounts at the rate of 2% per calendar month.

17.6 The Supplier reserves the right to terminate this Agreement with immediate effect upon written Notice if the End User fails to make a prompt payment of any Charges (or any other breach of this Agreement) within 30 days of Notice by the Supplier to the End User.

18. FORCE MAJEURE

Neither Party shall be liable for any delay in performing or failure to perform its obligations under this Agreement due to any cause outside its reasonable control. Such delay or failure shall not constitute a breach of contract and the time for performance of the affected obligation will be extended by such period as is reasonable.

19. NOTICES

19.1 Any notices given by the Supplier or the End User to the other under or in connection with this Agreement shall be in writing and shall be:

19.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at [SPECIFY RELEVANT ADDRESSES OF SUPPLIER AND END USER]; or

19.1.2 sent by email to the address specified in [SPECIFY RELEVANT EMAIL ADDRESSES OF SUPPLIER CONTACT AND END USER CONTACT].

19.2 Any notice shall be deemed to have been received:

19.2.1 if delivered by hand, on signature of a delivery receipt;

19.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;

19.2.3 if sent by email, at 9.00am on the next Business Day after transmission.

19.2.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. LIABILITY

20.1 Without prejudice to clause 20.2, the Supplier's maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed £5,000,000] in respect of any one or a series of claims that may arise.

20.2 Nothing in this Agreement shall exclude or in any way limit:

20.2.1 either party's liability for death or personal injury caused by its own negligence; or

20.2.2 either party's liability for fraud or fraudulent misrepresentation; or

- 20.2.3 liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.
- 20.3 This Agreement sets forth the full extent of the Supplier's obligations and liabilities in respect of the Managed Print Service and its hiring to the End User. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Managed Print Service which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.
- 20.4 With the exception of Clause 7 Intellectual Property Rights, the Supplier shall not be liable under this agreement for any:
 - 20.4.1 loss of profit; or
 - 20.4.2 loss of revenue; or
 - 20.4.3 loss of business; or
 - 20.4.4 indirect or consequential loss or damage,in each case, however caused, even if foreseeable.

21. DISPUTE RESOLUTION

- 21.1 Any dispute which may arise between the Parties concerning this Agreement shall be determined as provided in this clause 21.
- 21.2 For the purpose of this clause 21, a dispute shall be deemed to have arisen when one Party serves on the other a notice in writing stating the nature of the dispute.
- 21.3 After service of the notice of dispute, the following procedure shall be followed by the Parties (all periods specified in this clause 21.3 shall be extendable by mutual agreement):
 - 21.3.1 within five days the Parties shall meet face to face, if possible, to attempt to settle the dispute; and
 - 21.3.2 if the Parties are unable to reach a settlement within ten days from the date of service of the notice, Parties shall meet face to face, if possible, within the following seven days to attempt to settle the dispute.

22. TERMINATION

- 22.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the End User if the End User:
 - 22.1.1 fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

- 22.1.2 breaches any clause of this Agreement; or
 - 22.1.3 makes any statement, representation or warranty under or in relation to this agreement which is or becomes materially incorrect; or
 - 22.1.4 is unable to pay its debts as they fall due.
- 22.2 On termination of this Agreement for any reason the accrued rights and remedies of the Supplier as at termination shall not be affected, including the right to claim damages in respect of any event of default which existed at or before the date of termination.
- 22.3 The End User may voluntarily terminate this Agreement by giving at least 30 days written notice given to the Supplier.
- 22.4 The End User may terminate this Agreement if the Supplier:
- 22.4.1 materially breaches this Agreement;
 - 22.4.2 becomes insolvent;
 - 22.4.3 has a receiver or administrator appointed;
 - 22.4.4 is subject to a winding up petition or a resolution for winding up; or
 - 22.4.5 ceases to carry on its business.
- 22.5 Notice of such termination of this Agreement by the End User shall be in writing to the Supplier and will be effective upon actual receipt by the Supplier.
- 22.6 Where the End User and the Supplier have made all reasonable attempts to rectify any dissatisfaction of the End User pursuant to clause 21 of this Agreement and the End User remains dissatisfied with the Supplier in respect of the Supplier's obligations under this Agreement, the End User reserves the right to terminate this Agreement with no penalty incurred by the End User.

23. CONSEQUENCES OF TERMINATION

- 23.1 Upon termination of this Agreement, however caused:
- 23.1.1 the Supplier's consent to the End User's possession of the Managed Print Service shall terminate and the Supplier may, by its authorised representatives, without notice and at the End User's expense, retake possession of the Managed Print Service and for this purpose may enter the Site or any premises at which the Hardware is located; and
 - 23.1.2 without prejudice to any other rights or remedies of the End User, the End User shall pay to the Supplier on demand:
 - 23.1.2.1 all Charges and other sums due but unpaid at the date of such demand together with any interest accrued; and
 - 23.1.2.2 any costs and expenses incurred by the Supplier in recovering the Hardware and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and

remarketing costs).

- 23.2 Upon termination of this Agreement pursuant to either clause 22.1, 22.3 or any other repudiation of this Agreement by the End User which is accepted by the Supplier or pursuant to clause 20.3, without prejudice to any other rights or remedies of the Supplier, the End User shall pay to the Supplier on demand an agreed sum no greater than the whole of the Charges that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the term of this Agreement, less the discount (to be agreed amongst the Parties and being no less than 3% of the whole of the Charges) for accelerated payment at the percentage rate set out in the Payment Schedule.
- 23.3 The sums payable pursuant to clause 23.2 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 23.1.2.
- 23.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

24. NO PARTNERSHIP OR AGENCY

- 24.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, or authorise any Party to make or enter into any commitments for or on behalf of any other party.
- 24.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

25. FURTHER ASSURANCE

- 25.1 At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

26. WAIVER

- 26.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27. RIGHTS AND REMEDIES

- 27.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

28. SEVERANCE

- 28.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 28.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29. ASSIGNMENT AND OTHER DEALINGS

- 29.1 Neither party shall assign, transfer, mortgage, charge, subcontract or declare a trust over this Agreement (in whole or in part) without the other party's agreement in writing which shall not be unreasonably withheld. Where this Agreement is subcontracted (in whole or in part), the Supplier shall be responsible for the obligations, defaults or neglect of any subcontractor, as if they were the acts, defaults or neglect of the Supplier.

30. THIRD PARTY RIGHTS

- 30.1 Except as expressly provided in this Agreement, a person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 30.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this Agreement.

31. CONFIDENTIAL INFORMATION

- 31.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs.
- 31.2 Each Party may disclose the other party's confidential information:
- 31.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 31; and
 - 31.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 31.3 No Party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

32. DATA PROTECTION

32.1 The following definitions apply:

32.1.1 the terms "**data controller**", "**data processor**", "**data subject**" and "**processing**" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in the first schedule to that Act;

32.1.2 data includes Personal Data; and

32.1.3 "**End User Personal Data**" means any Personal Data provided by or on behalf of the End User.

32.2 The Supplier shall:

32.2.1 only carry out processing of any End User Personal Data on the End User's instructions;

32.2.2 implement appropriate technical and organisational measures to protect any End User Personal Data against unauthorised or unlawful processing and accidental loss or damage; and

32.2.3 only transfer End User Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.

32.3 The Supplier shall promptly and fully notify the End User in writing of any notices in connection with the processing of any End User Personal Data, including subject access requests, and provide such information and assistance as the End User may reasonably require.

32.4 The End User acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out under this agreement.

33. GENERAL

33.1 This agreement may only be varied or amended by agreement between the Supplier and the Customer in writing and signed by a representative of both Parties.

33.2 The End User shall not, without the prior written consent of the Supplier, solicit or endeavour to entice away, any present employee of the Supplier, during the term of this Agreement or within 6 months following the expiration or termination of this Agreement.

33.3 In accordance with clause 31 of this Agreement, the Parties shall use all reasonable endeavours to keep confidential all confidential information of the other Party held in connection with this Agreement.

33.4 This Agreement shall constitute the entire agreement and understanding of the Parties in relation to the subject matter of this Agreement and supersedes any prior representation, understanding or arrangement given or made by the parties whether orally or in writing, provided that nothing in this clause 33.4 shall exclude liability for fraudulent misrepresentation.

- 33.5 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 33.6 Failure or delay by the Supplier in enforcing any provision of this Agreement shall not constitute a waiver of any of the Supplier's rights under this Agreement.
- 33.7 This Agreement is governed by the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

Schedule 1
Managed Print Service

Hardware

Software

Documentation

Services

Schedule 2

Charges

Schedule 3

Specification

Schedule 4

Services

SIGNED by)
[a director] for and on behalf of **[SUPPLIER]**:)

[Director]

SIGNED by)
[•] for and on behalf of **[END USER]** :)

