HEIDELBERG GRAPHIC EQUIPMENT LIMITED - Digital Terms and Conditions (effective December 2018)

1. DEFINITIONS
1.1 Unless the context otherwise requires:
"Additional Charges" means the charges which may be made by Heidelberg in respect of the provision of Additional Services which will be calculated in accordance with Heidelberg's charging structure at its then prevailing rates;
"Additional Services" means any services which are not included in the Services:
"Billing Period" means each period for which charges are due as specified in the Agreement;
"Charges" means the payment due to Heidelberg in respect of the supply of Services and Additional Services as specified in the Agreement;

Agreement: "Confidential Information" means all information identified in writing as being confidential, which is obtained from the Customer by Heidelberg, or from Heidelberg by the Customer or is generated by Heidelberg in connection with the Agreement; "Consumables" means supplies which are consumed in the operation of the Products including but not limited to paper and other media, binders, covers, transparencies, staples, toner, toner cartridges, ink and developer and any other item defined by the media, binders, covers, transparencies, statples, toner, toner cartridges, ink and developer and any other item lend by the manufacturer as a consumable; "Maintenance" means the carrying out of repairs, replacement of parts, or adjustment to the Products to rectify a fault during Working Hours (remotely or by attendance on Site as determined by Heidelberg) following receipt of a request from the Customer, "Minimum Term" means the initial minimum period specified in the Agreement; "Print" means a copy or print made on an A3 or A4 page width. Larger copies or prints will count as two Prints except for wide format prints which will be charged as specified in the Agreement; "Products" means the equipment, accessories, software or other products specified in the Agreement; "Services" means installation and/or configuration of the Products following delivery and Maintenance and Support; "Site" means the location where the Services are to be delivered as specified in the Agreement; "Support" means addice by telephone, email or via the Heidelberg during Working Hours following receipt of a request from the Customer to diagnose faults in the software and advice to rectify such faults (remotely or by attendance on Site as determined by Heidelberg): "Working Hours Following Receipt of the Remarks of the State States of States and States and States are supported to rectify such faults (remotely or by attendance on Site as determined by Heidelberg): "Working Hours" means Abordov to Editar features to the contract of the States of States and States are supported to the States of States and States and States are supported to the States of States and States are supported to the States of States and States are supported to the States of States and States are supported to the States of States and States are supported to the States of States and States are supported to the States and States are supported to the States and States are supported to States and States are supported to States and States are supported to States and Stat

Customer to diagnose faults in the software and advice to rectify such faults (remotely or by attendance on Site as determined by Heidelberg);

"Working Hours" means Monday to Friday (inclusive) between 9am to 5pm excluding Bank and Public Holidays in England.

1.2 In these Conditions reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 Condition headings are for ease of reference only and shall not affect the construction or interpretation of these Conditions and words denoting the singular include the plural and vice versa.

1.4 In these Conditions a reference to a Condition is to a condition of these Conditions.

1.5 These Conditions expressly incorporate the terms and conditions of the Heidelberg End User Licence Agreement ("EULA"), a copy of which is available to download at www.uk.heidelberg.com or on request from Heidelberg.

of which is available to download at www.uk.heidelberg.com or on request from renewers.

2.1. The Agreement is contractually binding upon the Customer on its signature and will commence when it is accepted by Heidelberg.

The Minimum Term will start on the first day of the month following the date the Customer signs the Agreement or the date of delivery of the Products if this is later. The Agreement will continue until the end of the Minimum Term and thereafter until terminated by either party upon prior written notice of three (3) months not to expire before the end of the Minimum Term.

3 SITE 3. SITE

3. SITE
3.1. The Customer shall at its cost prepare the Site and provide sufficient facilities to enable Heidelberg to provide the Services. If requested by the Customer, Heidelberg shall prepare or inspect the Site and such work will be charged to the Customer as an Additional Charge. The Customer is responsible for ensuring that its information technology system is compatible with the Products and the Services.
3.2 The Customer shall give Heidelberg full and unhindered access to the Site and to the Products.
4.PAYMENT.

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3.2 The Customer shall give Heidelberg full and unhindered access to the Site and to the Products.

4. PAYMENT

4.1. The Charges are payable in advance on the first day of the month of the relevant Billing Period starting on the first day of the Minimum Term. The Products may contain a diagnostic facility which will provide Heidelberg with information about the use of the Products including print volume, Consumables consumption and faults. The Customer will use its best endeavours to ensure that it uses the diagnostic facility where provided. If Products do not have a diagnostic facility or it is not used to measure print volume, the Customer will provide meter readings from the Products every Billing Period, on request. If not provided, a member of Prints may be made by Heidelberg based on the number made in previous Billing Periods. For an Additional Charge, the Customer may request Heidelberg to attend the Site to collect the meter readings. The number of Prints made, or estimated, will be compared with volume included in the Service Charge and the Price for extra Prints shall be charged for every monochrome and colour Print made or estimated in excess of the volume included in the Charges.

4.2 If toner is included, it must only be used in the Products. If more toner is ordered than is required to produce the number of Prints made during the Billing Period the Customer may request Heidelberg and the Customer must return to Heidelberg and valued to the Customer must return to Heidelberg and the Valued and the Valued and the Valued and the Valued to the Agreement the Customer must return to Heidelberg and the Valued of Valued and Valued Val

5. MAINTENANCE AND SUPPORT
5.1 Heidelberg will use its reasonable endeavours to respond to a request for Maintenance and Support received during Working Hours within 4 Working Hours.
5.2 Maintenance and Support does not include the correction of any fault, in Heidelberg's sole discretion:
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6.2 Constant of the Customer's failure to maintain a suitable environment for the Products at the Site in accordance with the manufacturer's or licensor's including operating the Products outside design specification or failure to operate them in accordance with the manufacturer's or licensor's instruction manuals;
6.1 Caused by the alteration or modification of Products by any party other than Heidelberg;
6.2 Caused by the relocation of Products both on Site or to another location by any party other than Heidelberg;
7. Caused by the relocation of Products both on Site or to another location by any party other than Heidelberg;
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9. Caused b

(vi) asset by failure or damage caused by acts of violence, fires, floods, explosions, power surge or adverse environmental or other natural conditions are considered to the control of t

or the Agreement; (vii) supply of upgrades, software patches or service packs, unless supplied free of charge by the manufacturer; (vii) any requirement to carry out an annual or other test on the Products to satisfy statutory regulations or any repair necessitated as a result of a failure to satisfy such test.

result or a failure to satisfy such test.

6. SOFTWARE

6.1. The Customer shall use the software in accordance with all software licences required by the licensors including licences (if any) for software included within or ancillary to the Products.

6.2. In the event of any conflict between the terms of the applicable licensor's licence agreement and the Agreement, the licensor's conditions shall prevail only in relation to the software.

7. HEIDELBERG'S WARRANTY

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7. Heidelberg can help the Customer to select Services based on the requirements specified by the Customer, but their assessment
and selection remains the Customer's sole responsibility.
7.2 Heidelberg warrants that Services and Additional Services shall be performed with reasonable care and skill in accordance with the
approved standard of the manufacturer.
7. EVECEPT is SET OUT EXPRESS VI NITHE AGREEMENT, HEIDELBERG EXCLUDES, TO BE THE FULLEST EXTENT PERMISSIBLE IN LAW,
8. CHISTOMER'S INDIPETAMENATIES (EXPRESS OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE).

ALL TERMS, CONDITIONS AND WARI 8. CUSTOMER'S UNDERTAKING 8.1 The Customer undertakes to: (i) keep the Products at the Site;

(ii) supply all assistance, documentation and other information necessary for Heidelberg to diagnose or remedy any fault and to deliver the

(II) Supply on assessment (III) Services; and (III) and adequate virus protection systems for its busin 9. HEIDELBERG'S LIABLITY - THE BUYER'S ATTENTION IS DRAWN PARTICULARLY TO THIS CONDITION 9.1 Heidelberg does not exclude or limit its liability (if any) for

(i) fraud;
(ii) death or personal injury resulting from Heidelberg or Heidelberg's employees' negligence; or
(iii) any matter which cannot be excluded by or limited in law.
9.2 Heidelberg will be under no liability whatsoever for any loss or damage injury or expense caused by the Customer's misuse of the Products which arises by way of the Customer's incompetence or negligence or any other cause which is the fault of the Customer (including the ORU replacement process in Clause 15).
9.3. Except as set out in Clause 9.1 and Clause 9.2 above, Heidelberg shall not be liable to the Customer, whether in contract, tort (including but not limited to negligence or breach of statutory duty) or otherwise for any of the following types of losses:

(including but not limited to negligence or breach of statutory duty) or otherwise for any of the tollowing types or iosses:
(ii) loss of profits;
(iii) loss of revenue or anticipated savings;
(iii) loss of business;
(iv) loss or depletion to goodwill;
(v) loss of depletion to goodwill;
(v) loss of use of damage to data of software;
(vi) infection of or damage or interference caused to any computer operating systems or progress (or part thereof);
(viii) loss or damage suffered by the Customer as a result of an action brought against the Customer by a third party; and/or
(viii) any special, indirect or consequential loss, regardless of whether or not any such losses were foreseeable and/or Heidelberg had been advised of the possibility of the Customer incurring such losses. 9.4 Except as set out in Clause 9.1 above, Heidelberg shall not be responsible for any failure or delay in performing its obligations to the extent that such failures or delays are caused by any; (i) inaccuracies or omissions in (a) specifications or (b) information supplied or not supplied by the Customer; or (ii) acts or omissions of the Customer or a third party or (other than Heidelberg's agents).

or (b) miniminarity applied or his supplied by the Customer, or (ii) acts or diffusion to the Customer or a find party of (united the Heidelberg's agents).

9.5 Heidelberg's agents).

9.5 Heidelberg has calculated the Charges and Additional Charges on the basis of the exclusions from and limitations of liability are reasonable and are reflected in the Charges which would be higher without these provisions.

O.6 It shall be a condition precedent to the making of any claim against Heidelberg under this Clause 9 whether by action arbitration or otherwise that written notice of such claim shall have been given to Heidelberg by the Customer within 21 working days of delivery of the Products or in a case where a claim is sought to be made in respect of Products which have not been delivered within 10 working days of the date when it is alleged that they should have been delivered. If the Customer fails to give notice of any claim arising out of oin connection with the Agreement within the period referred to above then all claims shall be deemed to be waived and absolutely harred.

barred.

9.7 Except as set out in Clause 9.1, Clause 9.2 and Clause 9.3 above, Heidelberg's liability arising out of any one event, whether in contract, tort (including but not limited to negligence or breach of statutory duty) or otherwise arising in connection with the performance or contemplated performance of the Agreement shall be limited to either the total of (i) the Charges invoiced and paid over the previous six months or (ii) £25,000, whichever is the greater.

10. INTELLECTUAL PROPERTY

10. IN IELLEL IJAL PROPERTY

10.1 Heidelberg pre-existing proprietary rights shall remain with Heidelberg and the Customer is not granted any rights in any intellectual property embodied in the Products, Services and Additional Services developed by Heidelberg on behalf of the Customer, including but not limited to; (i) all patents, copyright, trade marks and any and all other intellectual property instreen; (ii) all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in the Products, Services and Additional Services.

Additional Services. 11. FORCE MAJEURE 11.1 Heidelberg may, wi

11. FORCE MAJEURE
11. Heidelberg may, without liability, delay performance or cancel the Agreement on account of force majeure or other circumstances beyond its control including, but not limited to, acts of God, war, riot, fire, earthquake, explosion, flood, strike, lockout, injunction or telecommunications, electrical or source of supply failure, or the unavailability, of services, personnel, products or materials / 12. CONTIDENTALITY
12. Except as in relation to any assignee or subcontractor referred to in Clause 13.2 below or any employee within the parties' respective group of companies (provided that each has advised employees, to whom Confidential Information of the other is disclosed, of the Agreement, pursuant to which such employees will be required to maintain the confidentially of all Confidential Information), enither party shall, without the previous written consent of the other, use, publish or disclose on any person, nor cause nor permit any of its servants, agents or sub-contractors to use, publish or disclose any Confidential Information which it has received from the other, when the production of the other of the performance of its duties under the Agreement, other than Confidential Information (in which becomes generally available in the public domain other than by its unauthorised disclosure by the receiving party; or (ii) which has or may come into the possession of one party otherwise than in breach of a duty of confidence to the other party; or (iii) which is already in the possession of a party with the right to disclose, or (iv) which is required to be disclosed by law.

3. ASSIGMENT AND SUBCONTRACTING

13. ASSIGNMENT AND SUBCONTRACTING

a party with the right to disclose, or (iv) which is required to be disclosed by law.

3. ASIGMMENT AND SUBCONTRACTING

13.1 The Customer shall not, without Heidelberg's prior written consent, assign the Agreement to any other person in whole or in part.

13.2 Heidelberg may assign the Agreement to any other person in whole or in part or subcontract the performance of any of its obligations under the Agreement.

4.1 TERMINATION

14.1 Heidelberg may the following happens:
(i) the Customer or any guarantor fails to make prompt payment of any Charges or to remedy any other breach of the Agreement within thinty (30) days of notice to do so by Heidelberg to the Customer;
(ii) the Products are lost, stolen or dramaged and declared a total loss;
(iii) the Customer or any guarantor of the Agreement is unable to pay its debts as they fall due, or becomes bankrupt, or begins negotiations with its creditors, or goes into liquidation or administration, or has a receiver or administrative receiver appointed over all or any of its assests or undertaking, or is dissolved or attempting, or is dissolved or attempting, or is dissolved provided against any of its assests;
(v) the Landlord of the premises where the Products are kept threatens to take any steps of distraint over the Products or in Scotland to exercise its right of hypothec over them or any of them.

(vi) a leading of the premises where the Products are kept threatens to take any steps of distraint over the Products or in Scotland to exercise its right of hypothec over them or any of them.

(vi) Heidelberg becomes aware that any information supplied by the Customer or any guarantor before entering into the Agreement was false in a material respect.

14.2 in the event of such termination, the Customer will immediately pay Heidelberg:
(i) all arrears of Charges and other sums due; plus
(ii) a sum equal to six months Charges for Services calculated by reference to the Charges for Services for which the Customer has
been invoiced during the twelve months prior to the date of termination or, if less than 12 months, pro rated accordingly. The Customer
acknowledges and agrees that this sum represents a genuine pre-estimate of Heidelberg's losses arising from such termination of the
Agreement.

(ii) a sum equal to six months Charges for Services calculated by retermination or, it less than 12 months, pro rated accordingly. The Customer acknowledges and agrees that this sum represents a genuine pre-estimate of Heidelberg's losses arising from such termination of the Agreement.

14.3 The Customer may terminate the provision of Services under the Agreement with immediate effect on written notice if Heidelberg is in material breach of any term of the Agreement provided that it has notified Heidelberg in writing of the breach and given heidelberg is in material breach of any term of the Agreement provided that it has notified Heidelberg in writing of the breach and given heidelberg is in material breach of any term of the Agreement provided that it has notified Heidelberg in writing of the breach and given heidelberg in the set of the provided that it has notified Heidelberg in writing of the breach and given heidelberg in the set of the Cartery of the Agreement however arising. Clauses 3.2, 4, 6, 7.3, 8.2, 9, 10, 12, 14.2, 14.3 and 16 will remain in effect.

15. OPERATOR REPLACEABLE UNITS (ORUS)

15. 10nly those Customer employees that have been trained and certified by a service representative of Heidelberg shall have no responsibility for and disclaims any and all liability with respect to any loss or dramage to any person or property resulting from or arising out of the acts or conduct of any persons other than a trained and certified Key Operator" which may be caused by the Customer's use or misuse of the ORU replacement process. It is the Customer's use or misuse of the ORU replacement process. It is the Customer's use or misuse of the ORU replacement of only only when a preventive maintenance alarm is indicated on the display panel of the equipment. Replacement activities shall be limited to the following: (a) replacement ORU because the process of the ORU replacement form; and (e) repacking of the replaced ORU and enclosing items (o) & (d) in the replacement ORU carton.

15.3 The Key Operator may n

Preventive Maintenance Target will be entered by the Key Operator when the ORU is replaced to ensure an accurate next preventive maintenance alarm for the ORU.

15.8 If, when an ORU is replaced for an emergency maintenance issue, it does not resolve that issue, the Key Operator shall immediately reinstall the original ORU and return the replacement ORU to its original carton.

15.9 Any ORU that is replaced for an emergency maintenance issue by a Key Operator at an out of normal service hour account without the instruction of a Heidelberg helpdesk representative must be reported to the Heidelberg helpdesk by Operator at the start of the next business day by logging a service call.

15.10 Replaced ORUs are to be storred near the machine or in an accessible location for the field service representative.

15.11 The replaced ORU will be refurbished and/or repaired locally at the Customer's location, or will be replaced ('swapped') with a refurbished ORU at the Service provider's sentiest opportunity.

15.12 If an ORU incurs non-repairable damage during normal usage or replacement, the helpdesk will provide a replacement ORU unit at no ocharce.

no charge.

15.13 The premature or unnecessary replacement of an ORU outside the guidelines reflected in the Agreement may subject the Customer to a surcharge.

15.14 Damage to an ORU caused by Key Operator misuse, abuse or negligence may subject the Customer to a surcharge.

15.14 Damage to an ORU caused by Key Operator misuse, abuse or negligence may subject the Customer to a surcharge.

16. GENERAL PROVISIONS

16.1 The Agreement sets forth the entire understanding between the parties and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the supply of Services and Additional Services. In particular the Customer acknowledges that it has not relied upon any statement, promise or representation made on behalf of Heidelberg which is not set out in the Agreement. Any purchase order issued by the Customer shall be for its administrative purposes only and none of its terms and conditions shall be of any force or effect against Heidelberg. No other agreements, representations or warranties, whether oral or written, shall be deemed to bind the parties with respect to the Agreement. Where any conflict arises between the Agreement and Heidelberg's General Trading Terms and Conditions the terms of the Agreement shall prevail.

16.2 The Agreement may not be modified or amended except by mutual written agreement signed by authorised signatories of both parties.

parties.

16.3 Except in relation to any assignee or subcontractor referred to in Clause 13.2, the parties hereby agree that a person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.

16.4 If the Customer is two or more persons, the Customer's obligations will be binding on each person separately and on both or all

16.4 If the Customer is two or more persons, the Customer's obligations will be binding on each person separately and on both or all persons jointly.

16.5 If any clause or part of a clause of the Agreement is found to be unenforceable then that clause or part will, to the extent required, be severed and will not affect any other provisions of the Agreement which will remain in full force and effect.

16.6. The waiver of a breach or default by either party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

16.7 Any notice to be served shall be in writing and served upon the recipient at its address set out in the Agreement or such other address as any party may notify to the other for this purpose from time to time by first class prepaid or registered post.

16.8 Save as otherwise expressly provided all Charges and Additional Charges are expressed exclusive of value added tax ("VAT") and any VAT arising in respect of any supply shall be paid to Heidelberg by the Customer in addition to such charges.

16.9 Headings to clauses are for the purpose of information and identification only.

16.11 The Agreement any no contractual oblications arising out of or in connection with it shall be governed by and construed in

16.10 Words in the plural shall include the singular and vice versa.

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17. REMOTE SERVICE

18. The Agreement any non contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England.

17. REMOTE SERVICE

18. The Products are connected to the Heidelberg remote service system, the Products will regularly send data to Heidelberg to be used by Heidelberg to analyse problems and diagnose errors in the event of disruption, for the continuous improvement of the quality of the Products, so the purposes so that as benchmarking and consulting services by third parties selected by Heidelberg. Such data are primarily technical data specific to the machinery, devices and applications comprised within the Products, such as software versions, totalizer status, licences, machine configuration and technical job data such as paper format, toner usage, print speed and number of waste sheets. Job data and personal data are not processed, Heidelberg shall pass the data sent to it by the Products to selected thirt parties in anonymised form. When ordering the Products, the Client expressly consents to the collection, transmission, storage and use of data by Heidelberg as described in this Condition 17.

18. LEGAL CONSTRUCTION

The Agreement shall be construed according to the laws of England and the Buyer hereby agrees to submit to the socie and exclusive jurisdiction of the Courts of England. Should these Conditions be translated into any language other than English, this English version of the Conditions shall prevail over any translation.

19. NOTICES

19. NOTICES
All notices and other communications required or permitted to be given under the Agreement shall be in writing and be delivered or transmitted to the intended recipient's address as specified in the Agreement or such other address as any party may notify to the other for this purpose from time to time.