

TERMS AND CONDITIONS - DATAPAC MANAGED PRINT SERVICE

Any reference to 'Datapac' in this document should be read to refer to the following Companies – Datapac Ltd, Datapac Consumables Ltd, Datapac Systems Ltd, Datapac Business Solutions Ltd and Datapac (N.I.) Ltd.

1. CUSTOMER OBLIGATIONS

- 1.1. The Customer is responsible for obtaining and holding the Devices specified in the Agreement. Devices are not owned by The Customer.
- 1.2. The Customer acknowledges that Datapac's ability to perform the Services is dependent upon the Customer's full and timely cooperation with Datapac, as well as the accuracy and completeness of any information the Customer provides to Datapac. Therefore, the Customer will:
 - 1.2.1. Subject to Datapac providing reasonable notice to the Customer, provide Datapac during Business hours (9.00 am and 5.30 pm) all necessary safe access and licenses if applicable, to all relevant information, Products (includes Customer Owned Products (include Devices supplied by Customer, Devices, and Remote Monitoring tools) and Datapac Products (includes Remote Monitoring Application and Supplies), facilities and office services reasonably necessary for Datapac to provide the Service efficiently.
 - 1.2.2. Appoint a main point of contact and make staff available as reasonably requested.
 - 1.2.3. Inform Datapac of any significant change in consumption of Supplies (including Print Cartridges (including toner and ink Cartridges), and Maintenance kits),
 - 1.2.4. Aid in the installation of drivers for each Product,
 - 1.2.5. Aid in the setup of printer queues,
 - 1.2.6. Perform the network device testing and
 - 1.2.7. Perform the mapping of the printer queues from the end-user.
- 1.3. The Customer shall be responsible for loss of or damage to the Products, and delays arising out of or in connection with Customer's failure to fulfil its obligations.
- 1.4. The Customer agrees to operate the Products in accordance with manufacturer's documentation.
- 1.5. The Customer shall bear the risk of loss or damage (fair wear and tear expected) to the Devices, from the date of delivery to the Customer's site until the Products are returned and received by Datapac. The Customer shall promptly notify Datapac of any loss or damage.
- 1.6. The Supplies provided are only to be used on the Devices referred to in the Agreement.
- 1.7. The Customer must handle empty print cartridges and used maintenance kits as instructed by Datapac for further disposal. The relevant information is available at www.hp.com/recycle.
- 1.8. Unless Datapac Installation Services is selected and unless specific notice is given to Datapac at the latest 10 days before Start Date of Services, Customer confirms that the Devices
 - 1.8.1. have been installed at required Site Adresse(s),
 - 1.8.2. have been examined by Customer and
 - 1.8.3. are in such operation order and condition as required under this Agreement.

In the event that the Device(s) fail to perform as expected or represented, the Customer will honour this agreement and continue to submit payments as per the contract \ SLA documentation.

2. CHANGE ORDERS

Any change to any aspect of the Services shall be mutually agreed in writing by the Parties. Change Orders are subject to Datapac's credit approval of the Customer, if Datapac considers it appropriate. In the event of conflict between the provisions of this Agreement and the provisions of any Change Order, the Change Order shall prevail.

3. OWNERSHIP

The Customer shall not purport to sell, assign, charge, sublease, affix or otherwise dispose of or encumber the Devices nor permit any mortgage, charge pledge, lien or other security interest or claim to arise over or in respect of the Devices. If the Customer does not conform to the requirements of this clause, it will be considered a material breach of this Agreement.

4. PRICE, PRICING CONDITIONS AND PAYMENT

- 4.1. Prices for the Services will be specified in the Agreement and detailed on the contract \ SLA. Page counts will be measured by Datapac or by the Remote Monitoring Tool and counts measured by Customer will not be accepted unless otherwise agreed by the Parties. Prices do not include taxes, levies or customs duties. Such taxes, levies and duties, when applicable, are payable by Customer and will be added to Datapac's invoices.
- 4.2. If, during the first six (6) months alter the Start Date, the assumptions used to develop the Agreement are found to be incorrect or misstated, the Parties agree to meet and in good faith negotiate equitable changes to the Agreement.
- 4.3. Payment might be adjusted when Change Orders are executed. All pricing changes resulting from Change Orders will be applied only from the time the Change Order is approved by both Parties.
- 4.4. Should the applicable Irish retail price index or accepted industry inflation price increase, Datapac may effective anniversary date of the Start Date increase the fees accordingly
- 4.5. All pricing estimations are based on 5% colour A4 coverage. In the event of sustained print volume averaging over 5% colour the Parties agree to meet and in good faith negotiate equitable changes to the Service and Pricing Statement.
- 4.6. The Customer's obligation to pay shall be absolute and unconditional, and shall not be subject to any reduction, set-off, or counterclaim, for any reason whatsoever.

5. WARRANTY

- 5.1. Datapac warrants that it will use reasonable skill and care in the performance of the Services.
- 5.2. Unless otherwise specified in the Agreement the warranty is limited to that of the manufacturer of the particular Device.
- 5.3. The warranty does not apply to defects resulting from:
 - 5.3.1. Customer or third party media, software, interfacing, supplies, or other products,
 - 5.3.2. Customer's improper site preparation or environmental conditions,
 - 5.3.3. improper use,
 - 5.3.4. modifications not performed or authorized by Datapac,
 - 5.3.5. Customer's non-compliance with this Agreement,
 - 5.3.6. malicious codes not introduced by Datapac, or
 - 5.3.7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Datapac's reasonable control.

6. INTELLECTUAL PROPERTY RIGHTS

Datapac will retain all intellectual property rights in the Services, , and shall not be restricted in any way from using or re-using all know-how, techniques, expertise, systems, products, services or other knowledge it holds or may create.

7. INTELLECTUAL PROPERTY INFRINGEMENT

Datapac has no obligation for any claim of infringement arising from

- (a) Datapac's compliance with Customer's designs, specifications or instructions,
- (b) Datapac's use of technical information or technology provided by Customer,
- (c) Device modifications by Customer or a third party,
- (d) HP Device use or maintenance other than as authorized by Datapac.

8. LIMITATION OF LIABILITY

- 8.1. Datapac's total liability is limited to damages for direct damages to tangible property up to a maximum of the service amount paid by Customer under this Agreement for the specific item during the three month period immediately prior to and including the period of such breach.
- 8.2. In no event will Datapac or any employee, agent or sub-contractor of Datapac be liable to the Customer for:
 - a) loss of actual or anticipated profits
 - b) loss of goodwill
 - c) loss of business
 - d) loss of revenue
 - e) loss of contracts
 - f) loss or use of use or downtime, software restoration

- g) loss of anticipated savings
- h) loss of or corruption to data (including software) or other information, damages relating to Customer's procurement of substitute services or damages for software restoration; and
- i) any indirect or consequential damage.

For the avoidance of doubt the loss or damage specified in clause 8.1 applies whether such loss is direct, indirect, consequential or otherwise.

8.3. Neither Party shall limit or exclude its liability for death or personal injury to the extent that it is held legally liable or, any other liability which cannot be excluded under law.

9. TERMINATION OF THE AGREEMENT

9.1. The Agreement shall, upon Datapac's and The Customer, commence on the Start Date and continue as specified in the Service Agreement, unless earlier terminated as provided for herein.

9.2. The Customer may terminate this Agreement for its convenience in accordance with the contract terms and conditions

9.3. The whole or any part of this Agreement may be suspended by Datapac or terminated by either Party upon written notice to the other:

9.3.1. if the other commits any material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied within 30 days after the service of written notice requiring the same;

9.3.2. upon the other Party becoming insolvent, is unable to pay its debts when due, files for bankruptcy, is subject to involuntary bankruptcy, has a receiver appointed, or has its assets assigned,

9.3.3. by Datapac, upon written notice to Customer if Customer fails to pay any sum due to Datapac by the due date therefore;

9.3.4. Upon termination by Datapac under this clause 9.3, the Customer will pay Datapac for all Services performed and reimburse Datapac in full for any costs, losses, expenses or damages Datapac incurs up to the termination and/or which Datapac incurs as a result of such termination and the Customer will receive all work in progress for which the Customer has paid.

9.4. Upon termination of this Agreement for any reason, Customer shall:

9.4.1. As agreed between the Parties in accordance with the Agreement return and deliver the Device(s)

9.4.2. return and deliver to Datapac all other property (and all copies thereof) and materials which

(a) belong to Datapac and/or

(b) contain confidential information or intellectual property rights of Datapac.

9.5. Without prejudice to any other rights or remedies which may be available to Datapac under this Agreement or otherwise, if Customer fails to comply with the provisions of this clause, Datapac / Lease Company shall be entitled to enter Customer's site and collect the Products.

9.6. No termination or expiration of this Agreement shall affect any other rights or remedies a Party may be entitled to hereunder or at law or any accrued rights or liabilities of either Party.

10. GENERAL

10.1. Data Protection.

Unless expressly agreed otherwise, any personal data that Customer discloses to Datapac may be used by Datapac in accordance with the then-current Datapac privacy policy for administering the relationship between the Customer and Datapac and for providing Customer with information about Datapac's products, services and programs.

10.2. Service Providers.

Datapac has the right to subcontract provision of the Services to authorized service providers.

10.3. Choice of Law.

The Agreement is made under and will be construed in accordance with the laws of Ireland and the Parties submit to the jurisdiction of the courts of Ireland in relation to all matters arising out of this Agreement.

10.4. Entire Agreement.

The Agreement supersedes all previous understandings, communications, representations, or agreements and additional or inconsistent terms.

10.5. No Assignment.

Customer may not assign, delegate or otherwise transfer all or any part of this Agreement without prior written consent from Datapac, which shall not be unreasonably withheld.

10.6. Publicity.

Customer shall not publicize or disclose to any third party without the consent of Datapac, either the price of the terms of the Agreement

10.7. Force Majeure.

Except for payment obligations, neither Party will be liable for performance delays or non-performance due to causes beyond its reasonable control.