

**DATED**

**200**

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**OCÉ PRINTING SYSTEMS GMBH**

**- and -**

**DUPLO CORPORATION**

**- and -**

**HUNKELER AG**

**- and -**

**IBM CORPORATION**

**- and -**

**STRÅLFORS AB**

**- and -**

**XEROX CORPORATION**

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**FIRST SUPPLEMENTAL AGREEMENT**

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**MIDDLETON POTTS**

**3 Cloth Street**

**Barbican**

**London EC1A 7NP**

**Tel No: 020 7600 2333**

**Fax No: 020 7600 0108**

**Ref: CU/JSM/3696-2/178050v3**

**THIS AGREEMENT** is made the                      day of                      200

**BETWEEN:-**

1.     **OCÉ PRINTING SYSTEMS GMBH** a company incorporated in Germany and whose registered office is at Siemensallee 2, 85586 Poing, Germany (“**OPS**”);
2.     **DUPLO CORPORATION** a company incorporated in Japan and whose registered office is at Duplo Building, 1-6 Oyama 4; Sagamihara, Kanagawa 229-1180, Japan (“**DUC**”);
3.     **HUNKELER AG** a company incorporated in Switzerland and whose registered office is at Bahnhofstrasse 31, 4806 Wikon, Switzerland (“**HAG**”);
4.     **IBM CORPORATION** a company incorporated in the United States of America and whose principal office is at New Orchard Road, Armonk, NY 10504, USA (“**IBM**”);
5.     **STRÅLFORS AB** a company incorporated in Sweden and whose registered office is at Låggatan 21, 341 84 Ljungby, Sweden (“**SAB**”); and
6.     **XEROX CORPORATION** a company incorporated in New York, United States of America and whose principal office is at 800 Long Ridge Road, Stamford, Connecticut 06904, USA (“**XXR**”)

**WHEREAS:-**

- (A)    The parties have entered into a Joint Venture Agreement dated \*[insert date]\* 2003 (the “**Joint Venture Agreement**”).
- (B)    The parties now wish to amend the Joint Venture Agreement as set out below.

**NOW IT IS HEREBY AGREED** as follows:

**1.     DEFINITIONS AND INTERPRETATION**

- 1.1    Except as otherwise defined herein or except where the context otherwise requires, words and expressions defined in the Joint Venture Agreement have the same meaning in this Agreement.

## 2. AMENDMENT

2.1 Clause 7.2 of the Joint Venture Agreement shall be deleted in its entirety and replaced by the following text:-

“7.2 For the avoidance of doubt, Intellectual Property Rights do not include any patents or applications for patents. However, the Core Group Members acknowledge that they and other UP<sup>3</sup>I Licensees may now or hereafter hold, develop, acquire or make patents and/or applications for patents the practice of which will be required for the implementation of the UP<sup>3</sup>I Specification. Accordingly, in order to avoid uncertainty for UP<sup>3</sup>I Licensees the Core Group Members have regulated the application of such patents and applications for patents in Clause 4 of the UP<sup>3</sup>I Licence.”

2.2 Clause 4 of the UP<sup>3</sup>I Licence shall be deleted in its entirety and replaced by the following text:-

“4.1 The Licensor makes no representation nor gives any warranty with respect to the existence of any patents that may affect the UP<sup>3</sup>I Specification and the Licensee shall use the UP<sup>3</sup>I Specification at its own risk. However, the Licensee acknowledges that patents may exist or be developed in the future the practice of which will be required for the implementation of the UP<sup>3</sup>I Specification. Accordingly, in order to avoid uncertainty for licensees of the UP<sup>3</sup>I Specification, it is a condition of this licence that the Licensee agrees as follows:-

- (a) In this Clause 4, "**Patent**" means a patent or an application for a patent under the laws of any jurisdiction the practice of which is required for the implementation of any present or future version or release of the UP<sup>3</sup>I Specification.
- (b) This paragraph (b) applies to any Patent of which the Licensee is the grantee or applicant at the date of this Agreement and the practice of which is required for the implementation of the UP<sup>3</sup>I Specification current at such date. If at any time the Licensee becomes aware of a Patent to which this paragraph (b) applies, the Licensee shall provide full written details thereof to the Licensor and confirm that it is prepared to grant a licence under such Patent on a royalty-free basis or (at its option) on reasonable and non-discriminatory terms determined by the Licensee. The Licensor will promptly publish on the UP<sup>3</sup>I Web site the details of such Patent and give written notice thereof to each other licensee of the UP<sup>3</sup>I Specification. The Licensee will promptly grant to any such

licensee on request at any time a perpetual world-wide licence under such Patent to allow, at a minimum, the practice and use of the then current and/or any future version or release of the UP<sup>3</sup>I Specification.

- (c) Within 60 days of the date on which the Licensor publishes a new version of the UP<sup>3</sup>I Specification on the UP<sup>3</sup>I Web site (whether in draft, interim or final form, and whether for consultation purposes or otherwise), the Licensee shall, if it holds a Patent to which paragraph (b) does not apply, provide full written details of that Patent to the Licensor and notify the Licensor that:-
  - (i) the Licensee will grant a perpetual world-wide royalty-free licence of such Patent to each licensee of the UP<sup>3</sup>I Specification on request at any time to allow, at a minimum, the practice and use of such new version and any future version or release of the UP<sup>3</sup>I Specification; or
  - (ii) the Licensee will grant a perpetual world-wide licence of such Patent to each licensee of the UP<sup>3</sup>I Specification on request to allow, at a minimum, the practice and use of such new version and any future version or release of the UP<sup>3</sup>I Specification on reasonable and non-discriminatory terms; or
  - (iii) the Licensee will not grant a licence of such Patent to any licensee of the UP<sup>3</sup>I Specification.
- (d) Where the Licensee gives notice under paragraphs (c)(i) or (c)(ii) above, the Licensor shall promptly publish on the UP<sup>3</sup>I Web site the details of such Patent and indicate that a licence thereunder is required and gives written notice thereof to each licensee of the UP<sup>3</sup>I Specification.
- (e) Where the Licensee gives notice under paragraph (c)(iii) above, the Licensor shall, at its option, amend the applicable version of the UP<sup>3</sup>I Specification and/or take such other steps as may be necessary to avoid infringement of the Patent referred to in such notice.
- (f) Where the Licensee fails to give notice of a Patent to which paragraph (c) applies within the period of 60 days referred to in paragraph (c), then the Licensee shall be deemed to have notified the Licensor that paragraph (c)(ii) shall apply.

- (g) Notwithstanding the termination of this Agreement:-
  - (i) any licence granted under a Patent pursuant to this Clause 4.1 shall remain in full force and effect; and.
  - (ii) the Licensee shall remain under a continuing obligation without any limitation of time to grant licences in accordance with this Clause 4.1 under any Patent of which it was the grantee or the applicant at the date of termination other than under a Patent in respect of which the Licensee shall have given notice that paragraph (c)(iii) applies.
- (h) This Clause shall not require the Licensee to undertake a review of its patents and patent applications to determine whether this Clause applies to any of them.

4.2 Any dispute arising out of or in connection with this Clause 4 shall be referred to and finally resolved by a single arbitrator who shall be a senior patent counsel appointed by agreement between the parties or, in default of agreement within thirty days of notification of a dispute by one party to the other, by the President of the Law Society of England and Wales upon the application of either of them. The place of the arbitration shall be London and the arbitration shall be conducted in English."

### **3. GENERAL**

- 3.1 Save as expressly set out in this Agreement, the Joint Venture Agreement shall continue in full force and effect. This Agreement shall be read and construed as one with the Joint Venture Agreement with effect from the date hereof and references in the Joint Venture Agreement to "this Agreement", "hereunder", "herein" and other like terms shall with effect from that date be read and construed accordingly.
- 3.2 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- 3.3 The construction, validity and performance of this Agreement shall be governed in all respects by English law and the parties hereby submit to the non- exclusive jurisdiction of the English courts.