

**1 DEFINITIONS AND INTERPRETATION**

In this Agreement (being these Damovo Terms and Conditions for Supply and/or Installation, the Statement of Works and any Schedules) the following words shall have the meanings set out below unless the context requires otherwise. If and to the extent of any inconsistency between these Terms and Conditions and the Statement of Works and any Schedules of this Agreement, these Terms and Conditions shall prevail.

**Acceptance Criteria:** the criteria set out in the Statement of Works or the Implementation Programme against which Damovo performs tests to verify that the Hardware and Software function is in accordance with this Agreement.

**Charges:** the sums specified in the Statement of Works as may be amended from time to time in accordance with this Agreement.

**Customer:** the entity specified as such in a Statement of Works.

**Damovo Licence:** the licence (if any) identified in the Statement of Works entered into between the Parties in relation to the use by the Customer of Software owned by Damovo.

**Hardware:** all materials, plant, equipment and hardware to be supplied by Damovo under this Agreement and as set out in the Statement of Works.

**Implementation Programme:** the programme for implementation of the works as agreed in writing between the Customer and Damovo, including the events to form part of such programme and the timing and sequence thereof as such may be amended from time to time in accordance with this Agreement. Unless agreed to the contrary, such a programme shall be used for planning and estimating purposes only and shall not be contractually binding.

**Intellectual Property Rights:** inventions, patents, trade marks, designs, design rights, trade secrets, copyright, database rights, trade, business or company names and other similar rights, whether registered, applied for or unregistered anywhere in the world, whether existing at the date of or during the term of this Agreement.

**Parties:** Damovo and the Customer.

**Premises:** the place or places of business of the Customer where the Hardware and Software are to be delivered and installed and where the Works are to be carried out, as identified in the Statement of Works.

**Site Survey:** the report (as may be amended from time to time in accordance with this Agreement) produced by Damovo of any survey of the Premises it may carry out pursuant to [clause 3.2](#).

**Software:** all computer programs and associated documentation to be provided by Damovo under this Agreement as set out in the Statement of Works. Where such Software is owned by a third party it is described as “**Third Party Software**”.

**Statement of Works:** the detailed description of the Works and the materials to be provided under this Agreement.

**Third Party Licence:** the licence (if any) identified in the Statement of Works that Damovo shall procure is granted to the Customer by the owner or authorised licensor of any Third Party Software to be provided on a directly licensed basis pursuant to this Agreement.

**Third Party Sublicence:** the sub-licence (if any) identified in the Statement of Works that Damovo is to grant the Customer in respect of the use of any Third Party Software to be provided on a sub-licensed basis pursuant to this Agreement.

**Working Day:** 8.30 am to 5.30 pm, Monday to Friday excluding public holidays in England.

**Works:** the supplies and services identified in the Statement of Works that are to be provided to the Customer by Damovo pursuant to this Agreement.

**2 SCOPE OF WORKS**

Subject to the terms of this Agreement and to the Customer's compliance with its obligations hereunder, Damovo shall deliver and install the Hardware and Software to the Premises in accordance with the Implementation Programme and carry out the Works with

reasonable skill, care and diligence. It is agreed that unless otherwise agreed, delivery and installation shall take place during the Working Day. The Works shall not include the provision of support and/or maintenance for the Hardware and Software. If the Customer wishes Damovo to provide the same, such services shall be provided under a separate agreement on terms to be agreed between the Parties.

**3 SITE SURVEY AND IMPLEMENTATION PROGRAMME**

3.1 Prior to commencing the Works Damovo shall submit to the Customer for its approval a detailed programme showing the events, indicative timing and sequence thereof for each separate stage of the Works. Once approved by the Customer this shall form the Implementation Programme. If not approved within 10 Working Days, the proposed programme shall be deemed to have been rejected and either Party shall be entitled to terminate the Agreement with immediate effect and Damovo shall be entitled to recover its reasonable costs incurred up to the date of the termination.

3.2 Damovo shall have the right to carry out a survey of the Premises and prepare a Site Survey. If the Site Survey reveals that additional work is required to enable the Works to proceed, the Parties shall meet to agree the same prior to the preparation and approval of the Implementation Programme. If the Parties cannot agree the scope of such additional work within 6 weeks, Damovo shall be entitled to terminate this Agreement with immediate effect and recover its reasonable costs incurred up to the date of termination.

**4 CUSTOMER OBLIGATIONS**

4.1 The Customer undertakes, at its own expense, to:

4.1.1 provide free, safe and unimpeded access to the Premises to Damovo's personnel and any of its sub-contractors during the Working Day (or out-of-hours as the Parties may agree) to enable Damovo and any of its sub-contractors to prepare any applicable Site Survey and carry out the Works;

4.1.2 prepare the Premises in accordance with the Site Survey and the Implementation Programme;

4.1.3 provide a suitable supply of electricity, water, gas, test exchange lines, all required electrical and mechanical items and fittings (other than the Hardware and Software) and any other services as Damovo shall reasonably require from time to time;

4.1.4 provide access to all personnel, information, data and other inputs and materials (including relevant health and safety information) as Damovo shall reasonably require from time to time;

4.1.5 secure any wayleaves, landlord permissions and any other licences necessary for, and/or as reasonably required by, Damovo and any of its sub-contractors to carry out the Works;

4.1.6 take all reasonable steps to ensure the health and safety of Damovo employees, agents and sub-contractors; and

4.1.7 in connection with the provision by Damovo of training (if any) as set out in the Statement of Works, it shall be responsible for paying any travel or living expenses reasonably incurred by Customer or Damovo personnel attending training courses.

4.2 If preparations are not completed in accordance with and to the standards required by the Implementation Programme and [clause 4.1](#), and Damovo incurs additional costs as a result, Damovo shall be entitled to recover the additional costs from the Customer. Furthermore to the extent that such failures cause delays to the Works then Damovo shall be relieved from any failure to meet its obligations arising from such failures.

4.3 The Customer shall not attach to the Hardware any equipment or load onto the Hardware any software not supplied or installed by Damovo under this Agreement without Damovo's prior written consent. Damovo reserves the right to invoice the Customer and the Customer agrees to pay for reimbursement of any costs or expenses reasonably incurred by Damovo as a result of making, removing or replacing any attachment to the Hardware.

4.4 The Customer shall notify Damovo in writing at the earliest opportunity of any legislation, proposed legislation or other new legal or regulatory requirements or proposed new legal or regulatory requirements specifically related to it or its industry (collectively a

“Change of Law”) that affect any aspect of the Works. If additional work such as modifications to the Hardware or Software is required due to the Change of Law, it and any related charges shall be agreed between the Parties in writing, with any additional costs being agreed accordingly. Damovo shall endeavour to complete any agreed additional work expeditiously, but nothing in this Agreement shall oblige it to complete them in time for the coming into force of the Change of Law. Damovo shall be entitled to recover any additional costs incurred as a result of a Change in Law.

## 5 ACCEPTANCE

5.1 Damovo shall test the Hardware and Software against the Acceptance Criteria. If no Acceptance Criteria are specified in the Statement of Works or the Implementation Programme, Damovo shall notify the Acceptance Criteria it intends to use to the Customer in writing no less than 5 Working Days' prior to the commencement of the tests.

5.2 The Customer shall be entitled to be present during the testing of the Hardware and Software. If the Customer fails to attend the tests on the date(s) reasonably specified by Damovo, Damovo shall be entitled to proceed in the Customer's absence.

5.3 Subject to clauses 5.5 and 5.6, where the Hardware and Software meet the Acceptance Criteria, Damovo shall provide the Customer with a copy of the test results at which point the Works (excluding any training of the Customer by Damovo) shall be deemed to have been accepted by the Customer.

5.4 If the Hardware and Software or any part of them fail to meet the Acceptance Criteria (other than for the reasons set out in clauses 5.5 and 5.6), Damovo shall use all reasonable endeavours to remedy the failure without undue delay and shall conduct repeat tests on a date or dates notified by Damovo to the Customer.

5.5 It is understood and agreed that (i) the Acceptance Criteria shall be deemed to have been complied with if they are met in all material respects; and (ii) the Hardware and Software shall not be prevented from satisfying or meeting their Acceptance Criteria due to minor faults that do not materially affect their performance. If, notwithstanding any deemed acceptance pursuant to this clause, there are any outstanding faults in the Works then Damovo shall use all reasonable endeavours to rectify the same without undue delay, but such faults shall not affect acceptance of the Works.

5.6 Notwithstanding the rest of clause 5, the Acceptance Criteria shall be deemed to have been complied with and the tests successfully completed if: (i) any of the Acceptance Criteria are not met due to an act or omission of the Customer; (ii) the Customer prevents Damovo from carrying out the tests for a period of 4 weeks or more; or (iii) if the Hardware or Software are put into operational use by the Customer at any time.

## 6 OWNERSHIP AND RISK

Risk of damage to or loss of the Hardware, Software and/or any materials provided to the Customer by Damovo shall pass to the Customer on their delivery to the Premises, or, if Damovo is prevented from delivering them due to the acts or omissions of the Customer, the date on which Damovo notifies the Customer that the Hardware, Software and/or any other material is ready for delivery. Title in any materials provided hereunder shall not pass until all Charges are paid in full.

## 7 PAYMENT

7.1 In consideration of Damovo carrying out the Works the Customer shall pay to Damovo the Charges within 30 days of the date of any applicable invoice or in accordance with such other payment arrangements set out in the Statement of Works.

7.2 All sums payable under this Agreement are exclusive of value added tax and any other applicable taxes. Where appropriate, value added tax shall be added and payable at the then applicable rate. All payments to be made under this Agreement shall be made without any deduction, withholding or set-off.

7.3 Without prejudice to any other rights and remedies of Damovo, if payment of any sum due under this Agreement by the Customer is delayed beyond the date specified in clause 7.1, Damovo shall be entitled to charge interest at the rate of interest set out in the

Late Payment of Commercial Debts (Interest) Act 1998 on the outstanding amount, calculated daily and compounded monthly, and Damovo shall be entitled to suspend the carrying out of the Works until payment is made in full.

## 8 WARRANTIES

8.1 In relation to the Hardware and the Third Party Software, Damovo warrants to the Customer in terms of the warranties received by Damovo from the relevant manufacturer and/or as set out in any relevant Third Party Sublicence as at the date of this Agreement. In relation to the Software owned by Damovo, Damovo warrants to the Customer as at the date of this Agreement in terms of the warranties set out in the Damovo Licence.

8.2 Provided that each item of Hardware and Software (in this clause 8 and in clause 10, all together, the “Materials”) operates according to its own specifications, Damovo warrants to the Customer that the Works will conform to the specification set out in the Statement of Works for a period of twelve months from acceptance, or deemed acceptance, pursuant to clause 5 (the “Works Warranty”). The Customer shall notify Damovo as soon as it becomes aware of any breach of this Works Warranty and shall provide reasonable assistance to Damovo in reproducing the circumstances giving rise to the breach. On receipt of such notification and assistance, as the Customer's sole and exclusive remedy for breach of the Works Warranty, Damovo shall (as its sole and exclusive liability for the same) use its reasonable endeavours to remedy the breach of Works Warranty as soon as reasonably practicable.

8.3 Without prejudice to terms of any supplier warranties referred to in clause 8.1, the warranties set out in clauses 8.1 and 8.2 shall not apply in the event that any defects in the Works are caused by any of the following:

8.3.1 the Works, or any of the Materials being used other than in accordance with Damovo's and the relevant suppliers' instructions and the terms of this Agreement (whether by being amended or modified other than by Damovo or with Damovo's prior written consent or otherwise); or

8.3.2 the Customer failing to implement any updates or error corrections provided by Damovo; or

8.3.3 an error in any software or hardware used with any Materials except as supplied by Damovo; or

8.3.4 any unauthorised attachment made to the Hardware by the Customer or any previously authorised attachment that is subsequently notified as being or potentially being detrimental to the efficient operation of the Hardware or Software that the Customer then fails to remove or replace;

8.3.5 any accident with, or misuse of, or abuse of, any Materials or Works or any negligence by the Customer or any third party.

8.4 Except as expressly provided in this clause, Damovo gives no warranties and makes no representations in respect of the Works and the Materials, or their quality or fitness for purpose or otherwise and all conditions or warranties implied by statute or otherwise are hereby excluded to the fullest extent permitted by law.

## 9 INTELLECTUAL PROPERTY RIGHTS

9.1 The parties agree that any Intellectual Property Rights arising in materials owned by Damovo prior to the date of this Agreement or created by Damovo during the course of this Agreement will vest in it absolutely and where applicable will be licensed to the Customer on a non-transferable, non-exclusive basis to use as may be reasonably necessary for the Customer to perform its obligations and exercise its rights under this Agreement. In no event shall the Customer acquire title to any of the Intellectual Property Rights arising in the Software or any other material supplied to it by Damovo whether as part of the Works or otherwise. The Customer will not modify or change or translate any materials provided by Damovo without Damovo's prior written consent and will not make any copies of the same except as may be reasonably necessary for back up or security purposes. The Customer agrees that it will not alter or obscure any copyright or trade mark notices which appear on any materials provided to it. The Customer will ensure that any copies of such materials made by it will contain the same copyright and trade mark notices as appear on the original.

9.2 By signing this Agreement, the Customer agrees to be bound by, and comply with, the terms of all Third Party Licences and Third Party Sublicences and to sign any Third Party Licence that any third party Intellectual Property Rights owner may require the Customer to sign. The Customer confirms that any click or shrink wrap Third Party Licence or Third Party Sublicence deemed to come into effect by being opened or loaded by Damovo in the course of the Works shall be deemed to have been entered into by Damovo as the agent of the Customer, and the Customer confirms that Damovo has its express consent to do so and that it will comply with the terms of the same as if it had opened or loaded the same.

## 10 IP INFRINGEMENT ALLEGATIONS

10.1 Other than as provided in [clause 10.3](#) below, Damovo gives no warranty and makes no representation to the Customer as to whether any Materials or their use by the Customer will infringe any third party rights, including Intellectual Property Rights and any terms which may otherwise have been implied into this Agreement to that effect are hereby expressly excluded to the maximum extent permitted by law.

10.2 This [clause 10](#) sets out Damovo's entire responsibility and liability to the Customer, and the Customer's sole rights and remedies, against Damovo, in respect of allegations of infringement of rights, including Intellectual Property Rights, made against the Customer by a third party or by the Customer ("**Infringement Allegation**") relating to any Materials or its (or their) use.

10.3 In respect of the Software owned by Damovo, Damovo's entire responsibility and liability to the Customer in respect of Infringement Allegations are set out in the Damovo Licence and the Customer shall have no rights or remedies against Damovo in respect of such Infringement Allegations other than under the Damovo Licence.

10.4 If the Customer receives notification of an Infringement Allegation relating to the Third Party Software, third party Hardware or third party Software media (in this clause, together, the "**Third Party Materials**"), the Customer shall forthwith notify Damovo and shall allow Damovo or if Damovo requests, the manufacturer or supplier to Damovo, to conduct the handling of such Infringement Allegation and any negotiations or litigation following thereon, and to settle any such Infringement Allegation at its own cost. The Customer shall make no admission or acknowledgement in respect of such Infringement Allegation without Damovo's prior written consent. The Customer shall give all reasonable assistance (at Damovo's cost) to Damovo and such manufacturer or supplier in any proceedings that Damovo or such manufacturer or supplier may decide to institute or defend in connection with such Infringement Allegation. Notwithstanding the foregoing, the Customer acknowledges that the Customer's rights against Damovo, in respect of any Infringement Allegation in respect of any of the Third Party Materials, are the same as, and limited to, and subject to the same terms as, Damovo's rights against the manufacturer or supplier of that Third Party Materials in respect of that Infringement Allegation. Accordingly the Customer acknowledges that Damovo shall only have obligations or liabilities to the Customer in respect of an Infringement Allegation in respect of any Third Party Materials to the extent that it is able to pass on such obligations or liabilities to the manufacturer or supplier of such Third Party Materials and to the extent that Damovo is not able to pass on such liabilities or obligations to such manufacturer or supplier, Damovo shall have no liability or obligation to the Customer in respect thereof.

10.5 If an Infringement Allegation is made or in Damovo's reasonable opinion is likely to be made in relation to any Third Party Materials, the Customer shall forthwith, on written request from Damovo, immediately discontinue its use of the relevant Third Party Materials. If it fails to do so, the Customer shall have no further rights against Damovo and Damovo shall have no further obligations to the Customer, in respect of such Infringement Allegation.

10.6 If an Infringement Allegation is made, or in Damovo's reasonable opinion is likely to be made in relation to any Third Party Materials, Damovo may, on the request of the supplier or manufacturer of the relevant Third Party Materials, at its discretion, modify or replace the relevant Third Party Materials so as to avoid the infringement provided the modified or replaced Third Party Materials has substantially the same functionality and performance, or obtain

for the Customer the right to continue using the relevant Third Party Materials. If the supplier or manufacturer of the relevant Third Party Materials terminates Damovo's rights to such Third Party Materials, as a result of an Infringement Allegation or its belief that one is likely to be made, Damovo may terminate the Customer's rights to use such Third Party Materials forthwith on written notice to the Customer, without liability.

10.7 If any Third Party Licence gives the Customer direct rights against the relevant supplier or manufacturer in respect of an Infringement Allegation, the Customer shall be obliged to pursue and exhaust those rights against the said supplier or manufacturer before it is entitled to make a claim against Damovo hereunder. If Third Party Software is sub-licensed by Damovo under a Third Party Sublicence, and such Third Party Sublicence contains provisions relating to Infringement Allegations, such provisions shall apply to the exclusion of the provisions in this clause and the Customer's sole rights and remedies against Damovo in respect of such Infringement Allegation shall be under the terms of the Third Party Sublicence.

## 11 LIMITATION OF LIABILITY

11.1 Nothing in this Agreement shall limit or exclude, or be read as an attempt to limit or exclude, any liability of either Party in relation to death or personal injury caused by its negligence or due to its fraud or any other liability that may not be limited or excluded by law.

11.2 Subject to [clause 11.1](#), each Party shall be liable to the other for loss of or damage to the other Party's premises caused by the negligence of its employees, subcontractors or agents provided that the total aggregate liability of each Party in respect of all such loss or damage shall be limited to £2,000,000.

11.3 Subject to [clauses 11.1 and 11.2](#), the entire aggregate liability of each Party to the other in connection with this Agreement, including for any breach of its contractual obligations (including but not limited to claims arising in respect of a breach of warranty); breach of statutory duty; and for any representation, statement or tortious act or omission, including negligence, shall be limited to the greater of £50,000 or an amount equal to the Charges paid by the Customer to Damovo, save that nothing in this clause shall be taken to limit the liability of the Customer to pay the Charges.

11.4 Subject to [clause 11.1](#), neither Party will have any liability to the other pursuant to this Agreement for any loss of profits or goodwill, loss of business, business interruption, loss of data, loss of anticipated savings, in each case whether direct or indirect, or for any type of special, indirect, or consequential loss or damage, or loss or damage suffered by the other Party as a result of any action brought by a third party, even if the loss or damage was reasonably foreseeable or that Party had been advised of the possibility of the other Party incurring it. If, and to the extent, a Party is found liable for any such loss, that Party's liability will be limited as specified under [clause 11.3](#).

11.5 Each Party shall maintain, with a reputable insurer carrying on business in the United Kingdom, a comprehensive insurance policy in respect of their respective liabilities under this [clause 11](#).

## 12 CONFIDENTIALITY

12.1 Neither Party shall use, copy, adapt, alter, disclose or part with possession of any information or data of the other Party that is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement, including this Agreement, which is of a confidential nature ("**Confidential Information**") except as strictly necessary to perform its obligations, or exercise its rights under this Agreement, provided that this obligation shall not apply to Confidential Information that: the receiving Party can prove was already in its possession at the date it was received or obtained; or the receiving Party obtains from some other person without any breach of obligation of confidentiality; or comes into the public domain otherwise than through the default or negligence of the receiving Party or that is independently developed by or for the receiving Party.

12.2 Nothing in this clause shall prevent either Party disclosing any Confidential Information to the extent that it is required to disclose it by law, or by order of any Court, or is under an obligation to disclose it to any government body, agency or regulatory body, provided that the Party seeking to rely on this clause gives to the other Party reasonable written notice of its intention to disclose.

12.3 The Parties shall ensure that their respective employees, agents and subcontractors comply with the provisions of this clause and the Parties shall be liable to each other for any breach of the provisions of this clause by their respective employees, agents or subcontractors.

### 13 TERMINATION

13.1 Each Party shall have the right (without prejudice to its other rights and remedies) to terminate this Agreement immediately by giving notice in writing to the other Party in any of the following circumstances:

13.1.1 a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or part of the assets or undertakings of the other Party, or the other Party enters into an arrangement or composition with all or a class of its creditors, or it becomes unable to pay its debts when they fall due or other circumstances arise that entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other Party, or, being an individual or firm, the other Party enters into bankruptcy; or any event analogous to any of the eventualities described above occurs in respect of the other Party; or a meeting is convened or a petition filed with a view to any of the eventualities described in this [clause 13.1.1](#); or the other Party ceases, or threatens to cease, to carry on business; or

13.1.2 the other Party commits a material breach of this Agreement and (in the case of a breach capable of remedy) fails to remedy it within 30 days of the date of a written notice by the non-breaching Party requiring it to do so; or

13.1.3 in the case of Damovo only, licences granted to Damovo and required for the purposes of the Works, or Damovo's agency in respect of them, expire or are revoked, in which event Damovo shall give to the Customer the maximum period of notice of termination reasonably practicable in the circumstances.

13.2 On termination of this Agreement, the Customer shall pay any outstanding Charges owed to Damovo and, if title has not yet passed to the Customer, the Customer shall return all Materials to Damovo. Any licences granted as at the date of termination shall terminate.

### 14 GENERAL

14.1 Neither Party will be liable for any delay or failure in the performance of their obligations under this Agreement where it is directly caused by circumstances beyond their reasonable control (in this Agreement, “**Force Majeure**”). Force Majeure does not release either Party from any obligation to pay money under this Agreement.

14.2 Any failure or delay on the part of either Party to exercise any power or right under this Agreement shall not operate as a waiver of it, nor shall any single or partial exercise of any such right or power preclude any other or further exercise of the right or power.

14.3 Neither Party shall be entitled to assign or otherwise transfer or dispose of this Agreement or any of its rights or obligations under it without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

14.4 Either Party may make public statements or announcements, whether to the press or otherwise, concerning the existence of, and in broad terms only (and, in particular, not to include details of the commercial terms of this Agreement), the nature of this Agreement.

14.5 A person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.

14.6 Save as provided in [clause 9.2](#), nothing in this Agreement shall be construed as establishing or implying any partnership, joint venture or a relationship of principal and agent between the Parties.

14.7 This Agreement constitutes the entire agreement between the Parties relating to the Works and supersedes all prior oral or written proposals, understandings or communications. This

Agreement may not be varied except in writing and any variation shall not be binding until signed by both Parties.

14.8 The Customer acknowledges that in the course of performance of this Agreement it may provide certain personal data (as defined in the Data Protection Act 1998 or any replacement thereof) to Damovo regarding its employees, sub-contractors and other third parties, in particular names and addresses of such persons. The Customer further acknowledges that Damovo may wish to disclose such data to its suppliers for various purposes connected to this Agreement, including without limitation so that suppliers can assist Damovo to carry out its obligations hereunder or so that suppliers have details of contacts for the purposes of software licences. The Customer directs Damovo to disclose such data (and warrants that it has all necessary consents and permissions required for the giving of such direction) to its suppliers in accordance with this clause as Damovo may require to disclose in order to perform its obligations under this Agreement, whether those suppliers are in the United Kingdom or elsewhere in the world.

14.9 This Agreement shall be governed by and construed solely in accordance with English law and any dispute arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English Courts.