

1 DEFINITIONS AND INTERPRETATION

In this Agreement (being these Terms and Conditions for Support Services, the Statement of Works (Services) 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.

Accredited Personnel: where applicable, the nominated representative(s) of the Customer trained in accordance with Clause 16;

Commencement Date: the date set out in the Statement of Works (Services);

Customer Contact(s): where applicable, the individual(s) named by the Customer for the purposes of liaising with Damovo and facilitating access to the Customer's premises whose details are provided to Damovo in writing;

Customer Support Centre: the Customer contact telephone number provided by Damovo to the Customer where Faults are reported, logged and relevant information can be conveyed;

Customer Support Request: any request properly made by the Customer under this Agreement;

Damovo Documentation: all drawings, designs, diagrams, specifications, manuals, reports and other information and documentation (whether in paper, electronic or other format) supplied to the Customer by Damovo for the purposes of this Agreement;

Due Date: each date on which payment is due and payable as set out in the Statement of Works (Services);

Fault: a failure of a part and/or the whole of the Maintained Network resulting in materially decreased operating performance. Faults will be classified as either "Critical" or "Non Critical" as agreed between the parties in writing;

Hardware: Maintained Hardware and Non-maintained Hardware or either of them;

Initial Term: the initial term of this Agreement set out in the Statement of Works (Services);

Intellectual Property Rights: all 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; and "Intellectual Property" shall have the corresponding meaning;

Maintained Hardware: all hardware to be maintained by Damovo pursuant to this Agreement and which is listed in the Statement of Works (Services);

Maintained Network: the Maintained Hardware and the Maintained Software;

Maintained Software: all software to be maintained by Damovo pursuant to this Agreement and which is listed in the Statement of Works (Services);

Non-maintained Hardware: all hardware belonging to/used by the Customer which is not Maintained Hardware;

Non-maintained Software: all software belonging to, licensed to and/or used by the Customer which is not Maintained Software;

Parties: Damovo and the Customer, and "Party" means either of them;

Passive Support: the investigation and resolution of Customer Support Requests that relate only to "Critical" Faults. In those circumstances, where the Customer Support Request relates to Maintained Software, Damovo shall refer to its library of patches and avoidance procedures for the relevant Maintained Software, and, if it contains a resolution to the Customer Support Request, Damovo shall implement it. Where it does not, Damovo shall inform the Customer and shall cease to have any further obligation or liability to the Customer in respect of the Customer Support Request;

Price: all sums payable for the Services, as specified in the Statement of Works (Services) (and as may be amended from time to time in accordance with this Agreement);

Services: means the services to be provided by Damovo to the Customer under this Agreement as set out in the Statement of Works (Services);

Software: the Maintained Software and the Non-maintained Software or either of them;

Specification: where applicable, the specification of the Maintained Network, whether that description relates to hardware or software or both;

Statement of Works (Services): the detailed description of the Services to be provided under this Agreement or in the absence of a specific Statement of Works, the corresponding Damovo quotation.

Variation: an amendment to this Agreement;

Work Around: a solution which enables the Maintained Network to operate in spite of the Fault, minimising the effect of the Fault without resulting in substantial extra inconvenience or expense for the Customer;

Working Day: 8.30 am to 5.30 pm, Monday to Friday (inclusive) excluding bank and public holidays in England;

Year: the period of 12 consecutive calendar months from the end of the Initial Term and each subsequent 12 month period.

1.1 In this Agreement unless the context requires otherwise:

1.1.1 the singular includes a reference to the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa;

1.1.2 references to Clauses and Schedules are to clauses of, and schedules to, this Agreement;

1.1.3 any reference to a statute or statutory provision shall include a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

1.1.4 references to persons shall include bodies corporate, unincorporated associations and partnerships, and any reference to "Damovo" and "the Customer" shall include references to their respective successors and permitted assigns; and

1.1.5 any reference to "company", "subsidiary" and "holding company" shall be as defined in section 736 of the Companies Act 1985.

2 SERVICES

2.1 Subject to the terms of this Agreement, Damovo shall, where applicable:

2.1.1 ensure that the Services are performed by employees, agents or sub-contractors of Damovo and that such employees, agents or sub-contractors possess suitable skills and experience and perform the Services with reasonable care and skill;

2.1.2 provide the Customer with occasional telephone and email advice on the use and operation of the Maintained Network as set out in the Statement of Works (Services);

2.1.3 assist the Customer in the diagnosis of Faults in relation to the Maintained Software and use its reasonable endeavours to investigate the Fault in accordance with this Agreement including, where technically possible, recommendations for correction and Work Arouns following the report of any Fault by the Customer to the Customer Support Centre;

2.1.4 agree with the Customer the classification of any Fault as Critical or Non Critical to the fundamental operation of the Maintained Network in accordance with the performance targets set out in the Statement of Works (Services) and, in the case of Maintained Software faults, use reasonable endeavours to generate a fix or Workaround and ensure the Maintained Software conforms to the agreed Specification;

2.1.5 diagnose and solve operational Faults remotely. If it becomes necessary to carry out the Services at the Customer's

premises and this is not included as part of the core Services to be provided by Damovo to the Customer this shall be deemed an additional service excluded from the Price and such work will be chargeable at the rates agreed by the Parties or in the absence of specific agreement at Damovo's standard service rates in effect from time to time.

3 COMMENCEMENT AND DURATION

This Agreement will commence on the Commencement Date and, subject only to earlier termination in accordance with its terms, shall continue in effect for the Initial Term and thereafter for 12 month periods unless and until terminated by either Party by at least 60 clear days' prior written notice to the other, such notice to expire not before the end of the Initial Term or any subsequent Year period.

4 CUSTOMER OBLIGATIONS

4.1 The Customer shall, at its own expense, without prejudice to the specific obligations set out in the Statement of Works (Services), do the following:

4.1.1 secure all wayleaves, permissions, licences, waivers, consents, registrations and approvals necessary for Damovo, its agents and sub-contractors to provide the Services;

4.1.2 provide a suitable supply of electricity, water, gas, test exchange lines and any other services as Damovo shall reasonably require from time to time;

4.1.3 where applicable, operate the Maintained Hardware and the Maintained Software in accordance with the relevant manufacturer's instructions and recommendations;

4.1.4 where applicable, permit and provide to Damovo acceptable remote diagnostic access to the Maintained Network in accordance with the Statement of Works (Services);

4.1.5 provide or procure the provision of free, safe and unimpeded access to the Customer's premises (or such other premises or sites required by Damovo) to Damovo, its employees, agents and sub-contractors for the purposes of providing the Services. To enable access, the Customer shall provide Damovo with a list of Customer Contacts who can be reached during the Working Day;

4.1.6 where applicable, and except as specifically provided in the Statement of Works (Services), not permit anyone except representatives of Damovo and/or its sub-contractors to perform support, attempt repairs or undertake any works on the Maintained Network;

4.1.7 where applicable, not modify or make any attachment to any part of the Maintained Network or any Non-maintained Hardware and/or Non-maintained Software which is connected to the Maintained Network without first notifying Damovo in writing and obtaining Damovo's prior written agreement;

4.1.8 where applicable, provide Damovo with a list of all Non-maintained Software and Non-maintained Hardware linked to or used in conjunction with the Maintained Network and the details of all service-providers offering maintenance and support services for the Non-maintained Software and Non-maintained Hardware;

4.1.9 where applicable, keep on disc and make available to Damovo immediately on request back-up copies of the Software;

4.1.10 where applicable, maintain the number of Accredited Personnel as specified in Statement of Works (Services).

4.2 Damovo will not be liable for any breach of this Agreement that is as a result of any failure by the Customer to comply with the obligations set out at clause 4.1 above.

5 PAYMENT

5.1 In consideration of Damovo providing the Services, the Customer shall pay to Damovo the Price in the instalments and on the dates specified in the Statement of Works (Services).

5.2 If by reason of any increase in the amount of Hardware and/or Software being maintained by Damovo, the cost of labour, materials or transport, or any increase in cost attributable to Government requirements (including without limitation increases in cost occasioned by changes in legislation, regulations or the

requirements of any regulatory body), the cost to Damovo at any time of performing its obligations under this Agreement is increased, Damovo may add the amount of the increase to the Price. Damovo shall notify the Customer of the increase, setting out the details together with any relevant background in the notice, as soon as reasonably practicable.

5.3 Without prejudice to clause 5.2 Damovo may increase the Price with effect from any anniversary of the Commencement Date by an amount equivalent to the increase in the All Items Retail Price Index for the immediately preceding period of twelve months.

5.4 Any additional charges made by Damovo to the Customer under this Agreement shall be payable within 30 days from the date of the invoice.

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

5.7 Without prejudice to any other rights and remedies of Damovo, if payment of any sum due under this Agreement by the Customer is delayed by more than 30 days from the relevant payment date, Damovo shall be entitled to charge interest from the relevant payment date 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 provision of the Services until payment is made in full.

6 VARIATIONS

6.1 Either Party may at any time during the continuance of this Agreement request, in writing, a Variation.

6.2 Upon either Party generating a request for a Variation, Damovo shall state in writing the effect the Variation would have on the Services and the Price within fourteen days.

6.3 Neither party shall be bound to accept any request for a Variation and no Variation shall be binding on Damovo or the Customer until Damovo and the Customer have agreed it, including all consequential amendments to either or both of the Services and the Price. If it does agree, this Agreement shall be amended as set out in this clause; the appropriate adjustment to the Price shall be made on the next anniversary of the Commencement Date but with effect from the date of implementation of the Variation. If not, this Agreement shall proceed as if the Variation had not been proposed. Any Variation will be set out in a written document and signed by an authorised signatory for and on behalf of each Party.

7 INTELLECTUAL PROPERTY

7.1 The parties agree and acknowledge that:-

7.1.1 Any Intellectual Property 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.

7.1.2 The Customer must ensure that the licenses for the Software which Damovo uses, modifies or has access to in providing the Services permits the activities set out in the Statement of Works (Services) and requested by the Customer from time to time. Any licence or sub-licence which requires Damovo to be a party to it in order to provide the Services must be granted or procured by the Customer.

7.1.3 The Customer will indemnify Damovo against any action brought by a third party for any failure to comply with sub-clause 7.1.2.

7.2 All copyright and other Intellectual Property Rights in the Damovo Documentation shall remain the sole and exclusive property of Damovo. The Customer shall have no rights in such, except that the Customer will have a non-transferable, non-exclusive licence to use such Damovo Documentation as may be reasonably necessary to perform its obligations and exercise its rights under this Agreement. The Customer will not modify or change or translate any of the Damovo Documentation or any part thereof without Damovo's prior

written consent and will not make any copies of the Damovo Documentation except as may be reasonably necessary for back up purposes. The Customer agrees that it will not alter or obscure any 'confidential information' (or equivalent), copyright or trade mark notices which appear on the Damovo Documentation. The Customer will ensure that any copies of the Damovo Documentation made by it will contain the same 'confidential information' (or equivalent), copyright and trade mark notices as appear on the original.

7.3 Except as specifically authorised in this Agreement, neither Party shall use the other Party's Intellectual Property Rights without the prior written consent of the other.

8 NEW LAW

8.1 The Customer shall notify Damovo in writing at the earliest opportunity of any legislation, proposed legislation or other new legal requirements or proposed new legal requirements (collectively "Change of Law") that affect any aspect of the Services.

8.2 The additional work occasioned by the Change of Law shall be treated as a Variation, with the consequences as to cost described in Clause 6.

8.3 Damovo shall endeavour to complete the agreed modifications expeditiously, but nothing in this Agreement shall oblige it to complete them in time for the coming into force of the Change of Law.

9 HARDWARE

Non-maintained Hardware

9.1 The Customer warrants that, for the duration of this Agreement, any Non-maintained Hardware is fit for its purpose and does not interfere with the proper operation of the Maintained Network.

9.2 The Customer acknowledges that alterations or upgrades to Non-maintained Hardware and Non-maintained Software may necessitate alterations or upgrades to the Maintained Software and/or the Maintained Hardware. The costs of making the alterations or upgrades shall be the sole responsibility of the Customer.

9.3 If the Customer does not comply with any of its obligations under Clause 9.2, Damovo shall not be liable under this or any other agreement or under statute or otherwise for Damovo's failure to provide the Services in accordance with this Agreement. In addition Damovo at its discretion, may:

9.3.1 terminate this Agreement in accordance with Clause 19;

9.3.2 continue to offer the Services but at a reduced level; or

9.3.3 adjust the Price for maintaining the Services at the same level as provided for in this Agreement.

Maintained Hardware

9.4 The Customer acknowledges that the relevant supplier may not continue to support and provide parts for the Maintained Hardware during the term of this Agreement and accordingly the Services may be affected.

9.5 If the relevant third party supplier (or any organisation nominated by it) ceases to provide either support or spare parts for any of the Maintained Hardware during the term of this Agreement, Damovo shall notify the Customer in writing with as much advance notice as is reasonably practicable and shall propose to the Customer alternative arrangements in relation to the same, for example:

9.5.1 a fixed price quotation for upgrading to the latest Maintained Hardware;

9.5.2 replacement hardware offering functionality not materially different from the Maintained Hardware; or

9.5.3 Passive Support for the Maintained Hardware for the unexpired portion of this Agreement;

and shall state whether the Price is to be adjusted as a result and if so how and when any additional payment or rebate is to be made.

9.6 If Damovo makes a proposal to the Customer under the preceding subclause, the Customer shall respond within 28 days and

if appropriate may select the alternative offered that it prefers. If the Customer fails to respond or declines the proposal, Damovo shall have no further obligation to the Customer to the extent of the impact of the relevant Maintained Hardware on the Maintained Network or any part of it.

10 SOFTWARE

10.1 The Maintained Network may utilise all or some of Maintained Software and/or Non-maintained Software.

Maintained Software

10.2 With respect to Maintained Software, during the contracted working hours as set out in the Statement of Works (Services) Damovo shall investigate and use its reasonable endeavours to resolve Customer Support Requests which indicate that a Fault exists and is caused by the Maintained Software, and/or the Maintained Software does not conform with the Specification. The Customer acknowledges that whilst Damovo is responsible for maintaining the Maintained Software for the term of this Agreement, it cannot guarantee that the supplier or manufacturer of the Maintained Software will continue to support the Maintained Software, or any particular version of it, throughout the term of this Agreement.

10.3 If, due to the actions of the manufacturer, Damovo ceases actively to support any element of Maintained Software during the term of this Agreement Damovo shall give all reasonable notice of such cessation to the Customer. Thereafter Damovo shall provide Passive Support for the relevant element of Maintained Software for the unexpired portion of this Agreement.

10.4 On ceasing to support actively any element of Maintained Software, Damovo shall, at Damovo's discretion, propose to the Customer:

10.4.1 a fixed price quotation for upgrading to the latest Maintained Software release, and/or

10.4.2 a separate long-term upgrade for that element of Maintained Software and its associated hardware; and/or

10.4.3 replacement software offering functionality not materially different from that element of the Maintained Software; and/or

10.4.4 Passive Support for that element of the Maintained Software for the unexpired portion of this Agreement.

and shall state whether the Price is to be adjusted as a result and if so how and when any additional payment or rebate is to be made.

10.5 If Damovo makes a proposal to the Customer under the preceding subclause, the Customer shall respond within 28 days and if appropriate may select the alternative offered that it prefers. If the Customer fails to respond or declines the proposal then, subject to Clause 10.3, Damovo shall have no further obligation to the Customer to the extent of the impact of the relevant Maintained Software on the Maintained Network or any part of it.

Non-maintained Software

10.6 The Maintained Network may depend on Non-maintained Software. If so, the Customer warrants that it is fit for its purpose and will operate as part of a system of which the Maintained Network forms part, and shall remain so for the duration of this Agreement.

10.7 Where the operation of the Maintained Network depends either in whole or in part on Non-maintained Software, the Customer undertakes not to alter or upgrade it without Damovo's prior written consent, which Damovo shall not withhold unreasonably, and undertakes to put into effect Damovo's reasonable instructions for implementing the alterations or upgrades. In giving any consent Damovo shall state whether the Price is to be adjusted as a result and if so how and when any additional payment or rebate is to be made.

10.8 The Customer acknowledges that alterations and upgrades to Non-maintained Software may necessitate equivalent alterations or upgrades to all or any of the Maintained Software and/or Maintained Hardware to ensure the same level of service. The costs of the alterations and upgrades required shall be the sole responsibility of the Customer.

10.9 If the Customer either does not comply with its obligations under Clause 10.7 or does not make the alterations or upgrades indicated in Clause 10.8, Damovo shall not be liable under this or any other agreement or under statute or otherwise for Damovo's failure to provide the Services in accordance with this Agreement. In addition, Damovo at its discretion, may:

10.9.1 terminate this Agreement in accordance with Clause 19;

10.9.2 continue to offer the Services under this Agreement but at a reduced level; or

10.9.3 adjust the Price for maintaining the Services at the same level as provided for in this Agreement.

10.10 Without prejudice to Clauses 10.07 to 10.9, where pursuant to this Clause the Customer alters or upgrades the Non-maintained Software, it agrees to submit the Non-maintained Software at its own expense to appropriate testing by Damovo.

11 CUSTOMER SUPPORT REQUEST

11.1 The Customer may make Customer Support Requests from time to time in accordance with the Statement of Works (Services).

11.2 Where expressly stated, the Customer shall ensure that only Accredited Personnel make Customer Support Requests to the Customer Support Centre. The Customer shall ensure that the Fault is correctly designated as Critical or Non Critical.

11.3 On receiving a Customer Support Request, Damovo shall, subject to Clause 4, provide the Services as agreed. It shall do so during the contracted working hours set out in the Statement of Works (Services), taking reasonable steps to ensure that no hazard is caused to the Customer's operations, and that no avoidable interruption or interference is caused to any service. Where it provides replacement parts to restore the Maintained Hardware to proper working order the parts removed will become the property of Damovo and the replacement parts installed the property of the Customer.

11.4 Damovo shall keep a service record of the Maintained Hardware and Maintained Software, and shall make it available to the Customer upon the Customer's written request. The service record will cover the immediately preceding period of up to 12 months, during which the Services were provided.

12 EXCEPTIONS AND ADDITIONAL SERVICES

12.1 Damovo shall provide services that are not included within the Price and as set out in the Statement of Works (Services) only (without limitation) where the Customer delivers to Damovo an order form signed by the Customer and Damovo accepts the order in writing and/or performs the services so requested.

12.2 Damovo reserves the right to charge the Customer at Damovo's rate prevailing at the time the charge is incurred for any work done, parts supplied and costs and expenses suffered by Damovo that are outside the scope of the Services and not covered by the Price, or, where applicable, to refuse the service requested. Additional services include without limitation:

12.2.1 consumable items (including standby batteries);

12.2.2 any support of Non-maintained Hardware or Non-maintained Software;

12.2.3 where a Customer Support Request is, in Damovo's reasonable opinion, unnecessary;

12.2.4 where visits by Damovo are wasted by reason of the Customer's breach of Clause 9 or 10 or failure to observe Clause 4;

12.2.5 where the Customer Support Request has arisen because of the Customer's failure to maintain environmental requirements notified in writing from time to time by Damovo to the Customer;

12.2.6 where the circumstances leading to the Customer Support Request are due to neglect, misuse, accidental or wilful damage to the Maintained Network on the part of the Customer, its employees, agents and contractors (other than Damovo and/or its subcontractors);

12.2.7 where the circumstances leading to the Customer Support Request are due to the modification, manipulation, alteration, or addition to or tampering with the Maintained Network or items used in connection with it other than by Damovo and/or its subcontractors or without Damovo's prior written consent.

12.2.8 where the circumstances leading to the Customer Support Request are caused by force majeure;

12.2.9 where the circumstances leading to the Customer Support Request are attributable to an unapproved attachment or modification made by the Customer;

12.2.10 where the Customer requests services to be performed on peripheral devices or items not listed in the Statement of Works (Services) or otherwise outside the Working Day;

12.2.11 where the Customer is requested but denies Damovo remote diagnostic access to the Maintained Network;

12.2.12 where the circumstances leading to the Customer Support Request relate to line wiring;

12.2.13 where the issue relates to the maintenance (or lack thereof) of anti-virus updates or any damage or loss of service in the event a virus infection of a network, server or PC;

12.2.14 without prejudice to anything in this Clause, where the Customer is in breach of this Agreement.

13 TYPE AND LEVEL OF SERVICE

13.1 The service type and level to be provided shall be as detailed in the Statement of Works (Services).

14 RETURN OF SMALL ITEMS OF HARDWARE

14.1 Telephone instruments and other small items of Hardware notified to the Customer in writing are excluded from the call out-repair service. The Customer shall suitably pack and return them at its own risk and expense for repair to Damovo at the address set out in the Statement of Works (Services) or such other address as Damovo may notify from time to time. Repair shall be free of charge during the first year from purchase and shall thereafter be charged at Damovo's current rates from time to time.

15 TRAINING

15.1 Where specified, Damovo shall provide training in the use of the Maintained Network as set out in the Statement of Works (Services). The Customer shall be responsible for paying any travel or living expenses reasonably incurred by Customer and Damovo personnel attending instruction.

16 FORCE MAJEURE

16.1 In this Agreement, "Force Majeure" means any cause preventing either Party from performing all or any of its obligations which arises from, or is attributable to, acts, events, omissions or accidents beyond the reasonable control of the Party so prevented, including, but not limited to, war, civil disturbance, riot, embargo, any labour dispute (whether involving the workforce of the Party so prevented or any other party), malicious damage, failure of suppliers or subcontractors or inability to obtain supplies, fire, flood, act or omission of Government, highway authorities, or public telecommunications operators, accident or breakdown of machinery.

16.2 If either Party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure, that Party shall forthwith serve notice in writing on the other Party, specifying the nature and extent of the circumstances giving rise to Force Majeure. Subject to the provisions of this clause 16, that Party shall have no liability in respect of the performance of such of its obligations as are prevented by Force Majeure during the continuation of the events and for such time after they cease as is necessary for that Party, using its reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

16.3 If either Party is prevented from performing its obligations for a continuous period in excess of 3 months, the other Party may terminate this Agreement forthwith on service of written notice. In such circumstances, neither Party shall have any liability to the other,

except that rights and liabilities which accrued prior to such termination (other than those arising directly from or attributable to the Force Majeure) shall continue to subsist.

16.4 The Party claiming to be prevented or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use all reasonable endeavours to bring the Force Majeure to a close or to find a solution by which the Agreement may be performed, despite the continuance of the Force Majeure.

16.5 Force Majeure does not release either Party from any obligation to pay money under this Agreement.

17 LIMITATION OF LIABILITY

17.1 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.

17.2 Subject to clause 17.1, 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.

17.3 Subject to clauses 17.1 and 17.2, 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.

17.4 Subject to clause 17.1, 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 17.3.

17.5 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 17.

18 TERMINATION

18.1 Damovo shall have the right (without prejudice to its other rights and remedies) to terminate this Agreement immediately by notice in writing to the Customer in any of the following events:

18.1.1 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 Customer or the Customer enters into an arrangement or composition with all or a class of its creditors, or it becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, 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 Customer, or, being an individual or firm, the Customer enters into bankruptcy; or

18.1.2 any event analogous to any of the eventualities described in Clause 18.1.1 occurs in respect of the Customer; or

18.1.3 a meeting is convened or a petition filed with a view to any of the eventualities described in Clause 18.1.1 or Clause 18.1.2; or

18.1.4 the Customer fails to make any payment when it becomes due to Damovo or defaults in the due performance or observance of any material obligation under this Agreement or any other agreement with Damovo 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 Damovo requiring it to do so; or

18.1.5 the Customer ceases, or threatens to cease, to carry on business; or

18.1.6 licences granted to Damovo and required for the purposes of the Services or any one or more of them, 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; or

18.1.7 the Customer has provided Damovo with any false, inaccurate or misleading information for the purpose of obtaining the Services (or any of them); or

18.1.8 the Customer is suspected, in Damovo's reasonable opinion, of involvement with fraud or attempted fraud or any other criminal offence in connection with the use of the Hardware or the Software.

18.2 The Customer shall have the right (without prejudice to its other rights and remedies) to terminate this Agreement immediately by notice in writing to Damovo in any of the following events:

18.2.1 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 Damovo or Damovo enters into an arrangement or composition with all or a class of its creditors, or it becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, 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 Damovo; or

18.2.2 any event analogous to any of the eventualities described in Clause 18.2.1 occurs in respect of Damovo; or

18.2.3 a meeting is convened or a petition filed with a view to any of the eventualities described in Clause 18.2.1 or Clause 18.2.2; or

18.2.4 Damovo defaults in the due performance or observance of any material obligation under 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 Customer requiring it to do so.

18.3 Nothing in this Clause shall, in the event of a Critical Fault, prevent the Customer from taking emergency action to meet its operational requirements. If the emergency action results in Damovo incurring additional costs in providing the Service, the Customer shall reimburse those costs.

18.4 Any termination of this Agreement shall be without prejudice to any other rights or remedies a Party may be entitled to under this Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after termination.

18.5 In the event that this Agreement or any of the Sites listed in the Statement of Works (Services) is/are terminated either during the Initial Term (during which period the parties agree and acknowledge there to be no termination for convenience permitted) or prior to the expiry of any subsequent renewal period, otherwise than for material breach on the part of Damovo, the amount payable by the Customer by way of a premature termination fee shall be equal to the full support costs for the Initial Term or any renewal period less the basic premium payments already received. In no event shall the termination fee when added to the basic premiums already received exceed the sum that would have been payable had the Agreement run the full term.

19 SUSPENSION OF SERVICES

19.1 Damovo may at its sole discretion suspend forthwith provision of the Services either in whole or in part until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing if:

19.1.1 Damovo shall be entitled to terminate this Agreement in accordance with Clause 18.1; or

19.1.2 Damovo shall be obliged to comply with an order, instruction or request of Government, regulatory authority, emergency services organisation or other competent authority.

19.2 Any exercise or non-exercise by Damovo of its right of suspension in respect of an event referred to in this Clause shall be without prejudice to Damovo's right to terminate this Agreement subsequently in respect of the same or any other event.

19.3 The Customer shall reimburse Damovo all costs and expenses incurred through the implementation of any such suspension or the recommencement of the provision of the Services as appropriate arising out of an event referred to in Clause 19.1.1.

19.4 If Damovo duly suspends the Services in circumstances of the Customer misusing the Hardware or the Software contrary to the provisions of this Agreement, Damovo may refuse to restore the Services until it receives an assurance from the Customer acceptable to Damovo that there will be no further relevant contravention of this Agreement by the Customer, its officers, employees or agents.

20 CONFIDENTIALITY

20.1 Neither Party shall use, copy, adapt, alter, disclose or part with possession of any information or data of the other that is disclosed or otherwise comes into its possession directly or indirectly as a result of this Agreement and that 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:

20.1.1 the receiving Party can prove was already in its possession at the date it was received or obtained; or

20.1.2 the receiving Party obtains from some other person without any breach of confidentiality; or

20.1.3 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.

20.2 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 20.2 gives to the other Party reasonable written notice of its intention to disclose.

20.3 The Parties shall ensure that their respective employees, agents and subcontractors comply with the provisions of this Clause 20 and the Parties shall be liable to each other for any breach of the provisions of Clause 20 by their respective employees, agents or subcontractors.

20.4 The obligations in this Clause shall continue in force notwithstanding termination of this Agreement for any reason.

21 GENERAL

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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.