TERMS AND CONDITIONS OF SOFTWARE LICENSING AND MAINTENANCE

1.   INTERPRETATION

1.1   The definitions and rules of interpretation in this clause apply in these terms and conditions.

Authorised Users: those employees or agents of the Customer who are authorised by the Customer to use the Software.

Business Day: any day which is not a Saturday, Sunday or public holiday.

Commencement Date: shall have the meaning given in clause 2.3.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 12.4.

Contract: the contract between DMC and the Customer for the purchase of the Software License and Maintenance Services in accordance with these terms and conditions.

Customer: the person, firm or company who purchases the Software License and Maintenance Services from DMC.

Customer Data: the data inputted by the Customer, Authorised Users, or DMC on the Customer's behalf for the purpose of using the Software or facilitating the Customer's use of the Software.

DMC: DMC Elevation Limited incorporated and registered in England and Wales with company number 6520960.

Initial Term: has the meaning given in clause 3.1.

Intellectual Property Rights: all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world.

Licence Fee: the fee for the Software License and the User Subscriptions payable by the Customer to DMC.

Maintenance Fee: the annual fee payable by the Customer to DMC for the Maintenance Services, as varied by DMC from time to time in accordance with clause 10.5.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

Maintenance Services: the maintenance services provided by DMC in relation to the Software as set out in clause 7.1.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by DMC in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Normal Business Hours: 9.00 - 17.00 GMT, each Business Day.

Order: the Customer's order for the Software License and Maintenance Services, as set out in the Customer's purchase order form.

Software: the *InsightApps^{TM}* and/or Elevator Service Manager*^{TM}* software, including any Maintenance Releases and New Versions.

Software License: a non-exclusive, non-transferable, perpetual licence to use the Software in accordance with these terms and conditions.

User Subscriptions: user subscriptions which entitle Authorised Users to access and use the Software in accordance with these terms and conditions.

Virus: any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device, including worms, Trojan horses, viruses and other similar things or devices.

1.2   Clause headings shall not affect the interpretation of the Contract and a reference to a clause shall be to a clause of these terms and conditions.

1.3   A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

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

1.5   A reference to one gender shall include a reference to the other genders.

1.6   A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7   Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.   BASIS OF CONTRACT

2.1   Except as otherwise set out in the Order, these terms and conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2   The Order constitutes an offer by the Customer to purchase the Software License and Maintenance Services in accordance with these terms and conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

| 2.3 | The Order shall only be deemed to be accepted when DMC issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence ("**Commencement Date**"). |

3.   TERM

| 3.1 | The Contract has effect from the Commencement Date and, unless terminated earlier in accordance with clause 15, shall continue for an initial term of 60 months (or such other initial term as specified in the Order) ("**Initial Term**") and shall continue thereafter for successive 12 month periods (each a "**Period**") subject to termination by either party giving not less than 90 days prior written notice, such notice to expire on the last day of the Initial Term or of any Period. |

4.   DELIVERY, ACCEPTANCE AND INSTALLATION

| 4.1 | DMC shall deliver to the Customer and, unless otherwise agreed between the parties, install on the Customer's equipment at the Customer's premises, one copy of the Software on a date agreed between the parties. Risk in any tangible media on which the Software is delivered shall pass on delivery. |

| 4.2 | On or after installation of the Software, DMC shall offer to provide the Customer with training in respect of the use of the Software. |

| 4.3 | The Customer shall be deemed to have accepted the Software following completion of the installation referred to in clause 4.1. |

5.   LICENCE

| 5.1 | In consideration of the License Fee and subject to these terms and conditions, DMC hereby grants to the Customer the Software License. |

| 5.2 | In relation to scope of use: |

| 5.2.1 | the number of Authorised Users shall be unlimited; however the number of concurrent users of the Software at any one time (whether accessing the Software through a PC, mobile device or any other form of media) shall be limited to the number of User Subscriptions purchased by the Customer, as set out in the Order or as otherwise agreed in writing between the parties; |

| 5.2.2 | use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer; |

| 5.2.3 | the Customer may make backup copies of the Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying; |

| 5.2.4 | the Customer may not use the Software other than as specified in this clause 5.2 without the prior written consent of DMC, and the Customer acknowledges that additional fees may be payable on any change of use approved by DMC; |

| 5.2.5 | the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer; |

| 5.2.6 | the Customer may not use any information obtained by the Customer during any reduction permitted under clause 5.2.5 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it; |

| 5.2.7 | the Customer shall not, without the prior written consent of DMC: |

| (i) | sub-license, assign or novate the benefit or burden of the Software Licence in whole or in part; |

| (ii) | allow the Software to become the subject of any charge, lien or encumbrance; or |

| (iii) | deal in any other manner with any or all of its rights and obligations under the Contract; and |

| (iv) | the Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and, in the event of any such unauthorised access or use, promptly notify DMC. |

| 5.3 | The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that: |

| 5.3.1 | is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive; |

| 5.3.2 | facilitates illegal activity; |

| 5.3.3 | depicts sexually explicit images; |

| 5.3.4 | promotes unlawful violence; |

| 5.3.5 | is discriminatory based on race, ethnicity, gender, colour, religious belief, sexual orientation or disability; or |

| 5.3.6 | causes damage or injury to any person or property, |

and DMC reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

| 5.4 | DMC does not warrant that the use of the Software will be uninterrupted or error-free. |

| 5.5 | The Customer acknowledges that the Software has not been developed to meet its individual requirements and that it is therefore the Customer's responsibility to ensure that the facilities and functions of the Software meet its requirements. |

| 5.6 | The Customer acknowledges that the Software may not be free of bugs or errors and that the existence of any minor errors shall not constitute a breach of the Contract. |

5.7   The Contract shall not prevent DMC from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are the same as or similar to the Software.

6.   USER SUBSCRIPTIONS

6.1   In relation to the Authorised Users, the Customer undertakes that:

6.1.1   it shall ensure that the number of persons using the Software at any one time does not exceed the number of User Subscriptions purchased by the Customer in accordance with clause 5.2.1;

6.1.2   it shall not charge the Authorised Users for accessing or using the Software, whether directly or indirectly; and

6.1.3   each Authorised User shall keep a secure password for his use of the Software and that each Authorised User shall keep his password confidential.

7.   MAINTENANCE SERVICES

7.1   During Normal Business Hours, DMC shall supply:

7.1.1   a telephone help desk to which Authorised Users can report faults in the Software and from which DMC will provide support services to Authorised Users;

7.1.2   remote telephone diagnoses, correction of faults and technical support; and

7.1.3   any additional support services as set out in the Order.

7.2   Where a fault occurs in the Software which the Customer wishes to be remedied, the Customer shall notify DMC of the fault and DMC shall acknowledge receipt of such notification within 1 Business Day.

7.3   DMC shall use its best endeavours to remedy faults in the Software as soon as reasonably practicable, however DMC provides no warranty or guarantee as to its ability to remedy faults within a particular time period or at all.

7.4   DMC shall issue Maintenance Releases of the Software as DMC deems fit at its absolute discretion.

7.5   Where a non-critical fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release, DMC may decline to provide assistance in respect of that non-critical fault.

7.6   DMC may, from time to time, offer a New Version for sale to the Customer and the Customer may choose to purchase such New Versions at its absolute discretion.

7.7   For the avoidance of doubt, the Maintenance Fees shall:

7.7.1   include the issue of Maintenance Releases; and

7.7.2   exclude any sum payable in respect of New Versions.

7.8   DMC may, on prior notice to the Customer, make changes to the Maintenance Services, provided such changes do not have a material adverse effect on the Customer's business operations.

7.9   DMC shall have no obligation to provide the Maintenance Services where faults arise from:

7.9.1   misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by DMC), including failure or fluctuation of electrical power;

7.9.2   failure to maintain the necessary environmental conditions for use of the Software;

7.9.3   use of the Software in combination with any equipment or software not provided by DMC, or any fault in any such equipment or software;

7.9.4   relocation or installation of the Software by any person other than DMC or a person acting under DMC's instructions;

7.9.5   any breach of the Customer's obligations under the Contract or having the Software maintained by a third party;

7.9.6   any Maintenance Release not authorised by DMC; or

7.9.7   operator error.

8.   CUSTOMER RESPONSIBILITIES

8.1   The Customer shall provide DMC and its authorised representatives with full, safe and uninterrupted access including remote access to its premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Maintenance Services.

8.2   The Customer shall ensure that appropriate environmental conditions are maintained for the Software and shall take all reasonable steps to ensure that the Software is operated in a proper manner by the Authorised Users.

8.3   The Customer shall:

8.3.1   co-operate with DMC in performing the Maintenance Services and provide any assistance or information as may reasonably be required by DMC, including in relation to the diagnosis of any faults;

8.3.2   report faults promptly to DMC;

8.3.3	keep full back-up copies of all of its data;
8.3.4	comply with all applicable laws and regulations with respect to its activities under the Contract;
8.3.5	ensure that the Authorised Users use the Software in accordance with these terms and conditions and shall be responsible for any Authorised User's breach of the Contract; and
8.3.6	ensure that its network and systems comply with the relevant specifications provided by DMC from time to time.

9. CUSTOMER DATA

9.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

9.2 If DMC processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and DMC shall be a data processor and in any such case:

9.2.1	the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out DMC's obligations under the Contract;
9.2.2	the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to DMC so that DMC may lawfully use, process and transfer the personal data in accordance with the Contract on the Customer's behalf;
9.2.3	the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
9.2.4	the Customer acknowledges and agrees that DMC's support staff shall have access to and may process the personal data for the sole purpose of providing the Maintenance Services;
9.2.5	DMC shall process the personal data only in accordance with the terms of the Contract and any lawful instructions reasonably given by the Customer from time to time; and
9.2.6	each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

10. FEES AND PAYMENT

10.1 The Customer shall pay the License Fee to DMC in cleared funds on or before the Commencement Date.

10.2 The Customer shall pay the Maintenance Fee to DMC in cleared funds on or before the Commencement Date and on each anniversary of the Commencement Date for the duration of the Contract.

10.3 All amounts and fees stated or referred to in the Contract:

10.3.1	shall be payable in pounds sterling;
10.3.2	are non-refundable;
10.3.3	are exclusive of VAT, which shall be added at the appropriate rate.

10.4 If the Customer fails to pay any amount payable by it under the Contract DMC may charge the Customer interest on the overdue amount (payable by the Customer immediately on demand) from the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of HSBC Bank PLC. Such interest shall accrue on a daily basis and be compounded quarterly.

10.5 DMC shall be entitled to increase the Maintenance Fee on each anniversary of the Commencement Date by up to 10%.

10.6 The Customer may not withhold payment of any sum by reason of any set-off of any claim or dispute with DMC whether relating to the quality or performance of the Software, the Maintenance Services or otherwise.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Customer acknowledges that all Intellectual Property Rights in the Software anywhere in the world belong to DMC, that rights in the Software are licensed (not sold) to the Customer, and that the Customer has no rights in, or to, the Software other than the right to use it in accordance with the terms of the Contract.

11.2 The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that DMC may consider necessary or desirable to perfect the right, title and interest of DMC in and to the Intellectual Property Rights in the Software.

11.3 The Customer acknowledges that it has no right to have access to the Software in source code form.

12. CONFIDENTIALITY

12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

12.1.1	is or becomes publicly known other than through any act or omission of the receiving party;
12.1.2	was in the other party's lawful possession before the disclosure;
12.1.3	is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
12.1.4	is independently developed by the receiving party, which independent development can be shown by written evidence; or

| | 12.1.5 | is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body. |

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

12.4 The Customer acknowledges that details of the Software, and the results of any performance tests of the Software, constitute DMC's Confidential Information.

13. INDEMNITY

13.1 The Customer shall defend, indemnify and hold harmless DMC against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software, including any breach by the Customer or the Authorised Users of the Contract.

14. LIMITS OF LIABILITY

The attention of the Customer is particularly drawn to the provisions of this clause 14.

14.1 Except as expressly and specifically provided in the Contract:

14.1.1 the Customer assumes sole responsibility for results obtained from the use of the Software by the Customer, and for conclusions drawn from such use. DMC shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to DMC by the Customer in connection with the Software, or any actions taken by DMC at the Customer's direction; and

14.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract.

14.2 Nothing in the Contract excludes the liability of either party:

14.2.1 for death or personal injury caused by negligence;

14.2.2 for fraud or fraudulent misrepresentation;

14.2.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

14.2.4 any other liability which may not be excluded by law.

14.3 Subject to clause 14.2:

14.3.1 DMC shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

14.3.2 DMC's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 100% of all fees paid by the Customer to DMC in connection with the Contract during the 12 months immediately preceding the date on which the claim arose.

14.4 All dates supplied by DMC for the delivery of the Software or the provision of Maintenance Services shall be treated as approximate only. DMC shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

15. TERMINATION

15.1 Notwithstanding any other provision of the Contract and without limiting any other rights or remedies that the parties may have either party may immediately terminate the Contract on written notice to the other if:

15.1.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

15.1.2 the other party enters into administration (whether out of court or otherwise), receivership, liquidation, a formal arrangement with its creditors or any analogous proceedings or procedure, or is otherwise insolvent or ceases or threatens to cease to trade.

15.2 On termination of the Contract for any reason:

15.2.1 DMC shall immediately cease to provide the Maintenance Services;

15.2.2 the Customer shall immediately pay to DMC all sums due to DMC under the Contract;

15.2.3 each party shall return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them;

15.2.4 DMC may destroy or otherwise dispose of any of the Customer Data in its possession; and

15.2.5 the Customer shall not be entitled to any refund of any Maintenance Fees paid to DMC under the Contract.

15.3 Where, during the Initial Term:

15.3.1   the Contract is terminated by DMC pursuant to this clause 15; or

15.3.2   any repudiation of the Contract by the Customer is accepted by DMC,

the Customer shall pay to DMC 95% of the Maintenance Fees that would have been payable by the Customer to DMC if the Contract had continued from the date of termination/repudiation until expiry of the Initial Term.

15.4   Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clauses 5, 6, 11 and 12, shall remain in full force and effect.

16. FORCE MAJEURE

16.1   DMC shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of DMC or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Service Providers or sub-contractors ("**Force Majeure Event**").

16.2   DMC's performance under the Contract is deemed to be suspended for the period that the Force Majeure Event continues, and DMC shall have an extension of time for performance for the duration of that period.

17. GENERAL

17.1   The Customer will not assign, sub-contract, charge or otherwise transfer to a third party any of its rights or obligations under the Contract without the prior written consent of DMC. DMC may assign, transfer or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Customer.

17.2   A person who is not a party to the Contract (a "**third party**") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

17.3   No delay by either party in enforcing its rights will limit or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

17.4   No variation of the Contract will be valid unless recorded in writing and signed by or on behalf of each party.

17.5   If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain unaffected and in force.

17.6   Nothing in the Contract will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising either party to act as agent for the other. Neither party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

17.7   Each party will, at the request of the other party and at its own cost, do (or procure others to do) everything necessary to give the other party the full benefit of the Contract.

17.8   Any notice given under the Contract:

17.8.1   shall be made in writing and either delivered personally or sent by recorded delivery to the party to whom the notice is addressed at its address as set out in the Contract or such other address as a party may specify by notice in writing to the other party; and

17.8.2   in the absence of evidence of earlier receipt will be deemed to have been duly given:

(i)   if delivered personally, when left at the address referred to in clause 17.8.1; or

(ii)   if sent by recorded delivery, at the time recorded by the delivery agent.

17.9   For the avoidance of doubt electronic mail will be deemed to be "writing" for the purpose of these terms and conditions but this will not prejudice the express requirements for delivery of notices under clause 17.8.

17.10   Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of the Contract.

17.11   The Contract contains the whole agreement between the parties in respect of its subject matter and supersedes any prior written or oral agreement between them, and the parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated in the Contract. Nothing in the Contract will operate to limit or exclude any liability for fraud.

18. GOVERNING LAW AND JURISDICTION

18.1   The Contract will be governed by and interpreted in accordance with the laws of England and Wales.

18.2   Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with the Contract.