

# Daisy Terms & Conditions for the Provision of Equipment, Data Network Services, Maintenance, Hosting, and/or Co-Location Services – June 2015

## 1. DEFINITIONS

1.1 In these Conditions the following terms shall have the following meanings:-

“**Access Procedures**” means the access procedures in relation to the Co-Location Services set out in condition 8.5;

“**Additional Charges**” means Charges which may be made (in addition to the Annual Support Charge) for additional services supplied pursuant to condition 6.3.3;

“**Annual Hosting Charge**” means the charge payable by the Customer to the Company annually in advance for provision of the Hosting Services as set out in the Order Form;

“**Annual Support Charge**” means the support charge for the Maintenance Services as set out on the Order Form;

“**Anti-Bribery Laws**” means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act;

“**Bribery Act**” means the Bribery Act 2010;

“**Broadband Acceptable Use Policy**” means the Company’s policy for the acceptable use of its broadband Service, the current version of which is available at [www.daisygroup.com](http://www.daisygroup.com) (or at such other URL as is notified to the Customer by the Company from time to time);

“**Business Day**” means any and all days from Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;

“**Carrier**” means the relevant third party public telecommunications operator or third party network service provider;

“**Charges**” means the charges payable by the Customer to the Company for Services performed including without limitation the Annual Hosting Charge, the Annual Support Charge, and the Co-Location Charges;

“**Co-Location Charges**” means the charges set out on the Order Form which are payable by the Customer to the Company in consideration for the provision of the Co-Location Services by the Company to the Customer;

“**Co-Location Services**” means the co-location services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

“**Co-Location Space**” means the space within the Company’s Facility for the installation of the Racks, IT Equipment and associated cabling for the Customer;

“**Commencement Date**” means the commencement date of the Minimum Term of the relevant Services being (as applicable) the Connection Date, the date of Delivery of the relevant Equipment or such other date as specified on the Order Form or as otherwise agreed in writing between the parties;

“**Company**” means Daisy Communications Limited a company registered in England and Wales with company registration number 4145329 whose registered office is Daisy House, Lindred Road, Business Park, Nelson, Lancashire BB9 5SR;

“**Connection Date**” means the date when the Carrier having received the relevant information from the Company is in a position to and has agreed to commence provision of the Data Network Services to the Customer Site or in the case of there being more than one Site, the earliest date such circumstance arises for any such Site;

“**Contract**” means the agreement between the Customer and the Company for the provision of the Equipment and/or Services (or any of them) incorporating these Conditions, the Order Form and any other Service Specific Conditions and/or Promotional Terms incorporated into the Contract in accordance with condition 2.1;

“**Contractor**” means any person who, on or prior to the Effective Date (and/or the transfer of such services to the Company), supplied services to the Customer which were the same as or similar to those provided or to be provided by the Company to the Customer under that Contract;

“**Customer**” means the person, firm or company specified on the Order Form and any other person appearing to act within that person’s, firm’s, or company’s authority and includes where relevant the Customer’s permitted assigns;

“**Data Network Services**” means the network services more particularly detailed on the Order Form (as modified or substituted by the Company from time to time) to be provided hereunder by the Company to the Customer;

“**Delivery**” means the point at which the Equipment arrives at the Customer’s Site immediately prior to the unloading of such Equipment from the delivery vehicle and ‘**Delivered**’ shall be construed accordingly;

“**Effective Date**” shall mean the date on which the Company signs the relevant Order and all conditions precedent to the effectivity of the Contract have been satisfied;

“**Employee**” means any employee, former employee, consultant, former consultant, contractor, former contractor, agent or former agent of the Customer or any Contractor or Subcontractor;

“**Employment Regulations**” means any laws in any country in the world implementing the provisions of EC Directives No. 77/187 dated 14 February 1977, 2001/23 dated 12 March 2001 or equivalent or similar regulations that protect the rights of employees on a transfer of a business or undertaking or any laws providing for the automatic transfer of employees on transfer of the whole or part of an undertaking, business or service provision change, including in the United Kingdom the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time;

“**Equipment**” means the equipment and/or software related products to be supplied under the Contract as set out on the Order Form (and also has extended meanings under condition 5.3.2 and condition 6 in the case of and for the purposes of those conditions only);

“**Estimated Power Draw**” means the estimated power draw for the Co-Location Services as specified on the Order Form;

“**Facility**” means the data centre set out on the Order Form or such other data centre notified to the Customer from time to time by the Company;

“**General Conditions**” means the general conditions of entitlement set by OFCOM, in accordance with section 45 of the Communications Act 2003, as may be amended, modified or replaced from time to time;

“**Group**” means together a person, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;

“**Hosted Data**” means the data which is hosted by the Company pursuant to the Hosting Services;

“**Hosting Services**” means the hosting services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

“**Installation**” means the physical installation of Equipment at the Site;

“**Installation Services**” means services for the installation of Equipment;

“**Intellectual Property Rights**” means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

“**IT Equipment**” means including but not limited to telecommunications, server, tape library, storage or security equipment provided by or belonging to the Customer and/or any customer of the Customer;

“**Maintenance Services**” means the maintenance services more particularly detailed on the Order Form (as modified or substituted from time to time) to be provided hereunder by the Company to the Customer;

“**Minimum Term**” means the minimum term applying to each of the Services commencing on the Commencement Date and expiring on the day at the end of the minimum term set out on the Order Form or if no minimum term is stated on the Order Form, 36 months;

“**Normal Working Hours**” means 9.00am to 5.30pm on any Business Day;

“**OFCOM**” means the Office of Communications and/or any successor body;

“**Order Form**” means the order form to which either (i) these Conditions are attached or (ii) which is expressed to be subject to these Conditions and which sets out the details of the order, including (without limitation) the Customer's details and the Equipment and/or Services to be supplied under the Contract;

“**Parent Undertaking**” has the meaning given to it in section 1162 of the Companies Act 2006;

“**Personal Data**” has the meaning given to it in section 1 of the Data Protection Act 1998;

“**Portal**” means the portal and/or any application programme interface with which the Customer is provided with access on these Conditions as part of the Services;

“**Price**” means the price payable by the Customer for the Equipment and Installation Services (where applicable);

“**Promotional Terms**” means any additional terms which apply to the Price and/or Charges and which may be specified on the Order Form and/or notified by the Company in writing to the Customer in relation to the Equipment and/or Services, at the time the relevant Order Form was submitted;

“**Rack**” means a single cabinet inclusive of rear distribution power strips, and rack mounts and is 600mm W x 1000mm D x (minimum) 42U in size;

“**Rate of RPI**” means the retail price index percentage change over 12 months announced by the Office for National Statistics (or successor body) in the month preceding an RPI Increase;

“**Relevant Laws**” means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

“**Remote Hands and Eyes**” means technical services which the Company agrees to provide to the Customer in accordance with condition 8.3.1;

“**Rollover Period**” means a period of twelve (12) months for which the term of the Contract will extend, unless terminated earlier and except in the case of a Small Business Customer;

“**RPI Increase**” means an increase in the certain Charges pursuant to conditions 10.2.5, 10.3.3, 10.4.3 and 10.5.3;

“**Service(s)**” means any of the services supplied by the Company and as set out on the Order Form including, without limitation, the Installation Services, the Data Network Services, the Co-Location Services, the Hosting Services and the Maintenance Services (as applicable);

“**Service Specific Conditions**” means any additional terms and conditions which are to apply to the Contract as specified on the Order Form or these Conditions in respect of specific Services, for example (and without limitation) the Broadband Acceptable Use Policy (but excluding Promotional Terms);

“**Site**” means any of the Customer's premises at which Data Network Services are to be performed;

“**Small Business Customer**” means a Customer who has been identified on the Order Form as being a Customer who: (i) is not a communications provider; and (ii) has 10 or fewer workers (whether as employees or volunteers or otherwise);

“**Software**” has the meaning given to it in condition 16.1;

“**Subcontractor**” means any subcontractor of a Contractor;

“**Subscription Charges**” means Charges payable by the Customer for the availability of the Data Network Services, but excludes any Charges which are levied specifically for usage of the Services and which are as set out in the Tariff;

“**Subsidiary Undertaking**” has the meaning given to it in section 1162 of the Companies Act 2006;

“**Tariff**” means the Company's tariff for calculating Charges for each of the Services which is set out at [www.daisygroup.com](http://www.daisygroup.com) or at such other URL as is notified to the Customer by the Company from time to time; and

“**User Instructions**” has the meaning given to it in condition 6.5.2.

## **2. CONTRACT FORMATION**

2.1 The Order Form constitutes the Customer's offer to the Company to purchase the relevant Equipment and/or Services. A Contract shall come into force and bind both parties once:

2.1.1 the Customer's offer is accepted by an authorised representative of the Company signing the Order Form;

2.1.2 the credit status of the Customer being to the satisfaction of the Company (in the Company's sole and absolute discretion); and

2.1.3 in respect of a Contract which provides for the supply of:

2.1.3.1 Equipment and/or Installation Services, (without limitation) the conditions in condition 4.1.1 being met; and/or

2.1.3.2 Data Network Services, (without limitation) the conditions in condition 5.1.1 being met;

2.1.3.3 Maintenance Services, (without limitation) the condition in condition 6.1.1 being met.

2.1.3.4 Hosting Services, (without limitation) the condition in condition 7.1.1 being met; and/or

2.1.3.5 Co-Location Services, (without limitation) the condition in condition 8.1.1 being met

2.2 All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon the terms of the Contract which cannot be varied unless agreed in writing by the Company in accordance with condition 19. These Conditions supersede all other terms, conditions and warranties which are implied by law or which the Customer may purport to apply under any purchase order or acknowledgement of delivery or similar document or otherwise and/or which have been established between the Company and the Customer by course of dealing.

2.3 In the event of a conflict or inconsistency between any of the documents which constitute the Contract, the following descending order of precedence shall apply:

2.3.1 the Order Form;

2.3.2 any applicable Service Specific Conditions;

2.3.3 any applicable Promotional Terms;

2.3.4 the Conditions; then

2.3.5 any other documents referred to on the Order Form or in these Conditions. For the avoidance of doubt, the fact that the Promotional Terms are silent on a particular matter whereas any of these Conditions, the Order Form and/or the Service Specific Conditions make provision for the same, shall not be deemed to give rise to a conflict or inconsistency.

2.4 Any illustrations, samples or descriptive material provided by the Company, including drawings, specifications of weight, capacity or dimensions shall not form part of the Contract but shall be treated as approximate only unless specifically stated otherwise. Any savings quoted are estimates and illustrative only. All documents containing such illustrative or descriptive material (as well as the copyright therein) shall remain the exclusive property of the Company and must not be copied or loaned or transferred by the Customer. The Customer acknowledges and agrees that in entering into the Contract, it has not relied on any such illustrations, samples or descriptive material.

2.5 Each order for Equipment and/or Services (except in the case of Installation Services which will form part of the contract for the supply of Equipment) shall (for the purposes of this condition 2.5) be deemed a separate Contract (whether or not included on the same Order Form) to the effect that any delay or failure to supply Equipment and/or Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Services or any other contract entered into under these Conditions.

2.6 Any undertaking by the Customer not to do any act or thing shall be deemed to include an undertaking that the Customer shall procure that any user of the Services and/or Equipment including (without limitation) any of the Customer's employees, agents or contractor, shall not do such act or thing.

2.7 The Customer warrants and undertakes to the Company that it is entering into the Contract for the purposes of its trade, business and/or profession, and is not acting as a consumer.

## **3. CUSTOMER'S ORDER AND SPECIFICATIONS**

3.1 The Customer shall be responsible for providing the Company with all information relevant to the supply of the Equipment and the provision of Services (as the case may be) within sufficient time to enable the Company to duly perform the Contract.

3.2 Without limitation to the generality of condition 3.1, the Customer shall ensure that the details set out on the Order Form and any drawings, sketches, specifications, descriptions or other instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of any Equipment or Services (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall be liable for each liability, loss, injury, damage, demand, claim, cost, charge or expense which may be incurred or sustained by the Company by reason of or arising directly or indirectly out of or in respect of any inaccuracy in respect of any such drawings, sketches, specifications, descriptions or other instructions in relation thereto, or where the compliance with, or use of any such details, drawings, sketches, specifications, descriptions or other instructions by the Company constitutes the infringement of the Intellectual Property Rights or other rights of a third party.

3.3 The Customer shall provide the Company with all information and documentation which may reasonably be required by the Company in order to allow the Company to fulfil its obligations arising out of any Contract.

#### **4. SUPPLY OF EQUIPMENT AND INSTALLATION SERVICES**

In the event that the section related to Equipment is completed on the relevant Order Form or in the event that the Company is providing Equipment and/or Installation Services to the Customer, this condition 4 shall apply to the Contract.

##### **4.1 DELIVERY**

4.1.1 The conditions referred to in condition 2.1.3.1 are that:

4.1.1.1 the Company provides written confirmation to the Customer that the Equipment referred to on the Order Form is available and can be supplied in the stated timescales; and

4.1.1.2 the Company provides confirmation by email to the Customer that the terms stated on the relevant Order Form do not contain any errors or omissions.

4.1.2 In consideration of payment of the Customer's payment of the Price pursuant to condition 10.1.1 the Company shall take reasonable steps to deliver the Equipment and where applicable supply the Installation Services using reasonable skill and care, within an estimated period for delivery. Such period shall (unless otherwise specified) commence from the date of receipt by the Company of all instructions and information required for the execution of the Contract. The Company does not guarantee that Delivery or installation will take place within such period, and time is not of the essence of the Contract.

4.1.2 Without prejudice to the generality of condition 3.1, the Customer shall be responsible for providing the Company with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by the Company to the Customer.

4.1.3 If the Customer fails to take Delivery of the Equipment or if by reason of instructions or lack of instructions from the Customer the delivery of any Equipment in accordance with the Contract is delayed for more than twenty-eight days after the Company has given notice in writing to the Customer that the Equipment is ready for delivery the Equipment shall be deemed to have been Delivered in accordance with the Contract and thereafter the Equipment shall be deemed to be at the risk of the Customer. The Customer shall pay to the Company the reasonable costs of storing, protecting and preserving such Equipment after the expiry of such period of twenty-eight days.

4.1.4 If the Contract provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the Contract as at an end or to reject any other instalment.

4.1.5 If by reason of refusal or delay of Delivery or installation the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.3 then payment shall be made by the Customer to the Company of the balance of the Price within seven days of such deemed Delivery date.

##### **4.2 CONNECTION**

4.2.1 The responsibility for the cost of connection to the public switch telecommunications network and/or the provision of additional circuits or services to the public telephone system lies with the Customer and will payable in addition to the Charges.

4.2.2 The Customer shall ensure that a suitable earthed mains electricity supply of 240volts ac conforming to the Institution of Engineering and Technology's IEE Wiring Regulations in force at the date of Delivery is available for each piece of Equipment within 2 metres of such pieces of Equipment.

4.2.3 The Customer shall prepare the Site(s) (at its own cost) in accordance with the Company's instructions so that any necessary Equipment can be installed.

4.2.4 The Customer shall adhere to the Equipment manufacturer's power and environmental specifications (as published from time to time) and confirm to all local electrical code requirements.

4.2.5 The Customer shall provide power to Equipment via an adequate number of circuits provisioned according to the Equipment manufacturer's specification.

4.2.6 The Customer shall be responsible for the cost to supply and install any and all infrastructure required to accommodate the power and environmental specifications as specified by the Equipment manufacturer (as published and as amended from time to time).

4.2.7 The Customer shall (at its cost) install an uninterruptable power supply at the Site providing not less than 60 minutes of standby power at the Site for the Equipment.

##### **4.3 PROPERTY AND RISK**

4.3.1 The risk of loss or damage to the Equipment shall vest with the Customer from the moment of Delivery or deemed Delivery (as described in condition 4.1.3) irrespective of whether title to the Equipment has passed or payment or part payment has been made therefor. From the moment of Delivery or deemed Delivery (as described in condition 4.1.3) the Customer shall be responsible for insuring the Equipment.

4.3.2 Notwithstanding Delivery and the passing of risk, the legal and beneficial interest in the Equipment supplied under the Contract shall not pass to the Customer until the Company has received in cleared funds payment in full of all sums due for the Equipment and Installation Services (where applicable).

4.3.3 Until such time as the legal and beneficial interest in the Equipment has passed to the Customer, the Customer shall hold such Equipment as the Company's fiduciary agent and bailee, and keep such Equipment properly stored, protected and kept free from any loss, damage, and/or deterioration and insured against all risks for its full reinstatement value and identified as being the Company's property until title passes.

4.3.4 Until such time as the legal and beneficial interest in the Equipment passes to the Customer, the Company shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to the Company at its nominated location and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Equipment is stored and remove and repossess such Equipment.

4.3.5 The Customer shall not, without the prior written consent of the Company, pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any right or remedy of the Company) forthwith become due and payable.

##### **4.4 LIABILITY FOR REPLACEMENT OR REPAIR**

4.4.1 Subject to the following sub-conditions of this condition 4.4, at the Company's option, for a period of twelve months from the date of Delivery or Installation (where applicable) whichever is the later event, without cost to the Customer, the Company shall (as applicable) either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of the Company to be the result of faulty design, materials or manufacture or re-perform any Installation Services (only where the Company has supplied Installation Services under the Contract) provided that the Company shall have no liability for any such defects unless the Customer notifies the Company, within three Business Days from Delivery or the completion of the Installation Services (where applicable) whichever is the later event, of any defect arising prior to and/or on Delivery or Installation (as the case may be) and (subject to condition 4.4.2) within twenty four hours of any latent defect arising within such twelve month period.

4.4.2 If the Customer enters into an agreement for maintenance of the Equipment with a third party, the Company's liability for defects in the Equipment shall cease, save for the Company's liability for defects arising on or before Delivery of the Equipment in accordance with condition 4.4.1.

4.4.3 Where the Company is to supply Maintenance Services in respect of the relevant Equipment under the Contract, condition 6 shall apply and in the event of any conflict between this condition 4.4 and condition 6, the provisions in condition 6 shall prevail.

4.4.4 The liability of the Company shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to the Company by the Customer prior to entering into the Contract, and in particular shall not apply to defects which arise from neglect, misuse, or faulty maintenance of the Equipment by the Customer or any of its other contractors, or from alterations carried out without the prior written consent of the Company or from repairs carried out improperly by the Customer or its servants or agents or arising from normal wear and tear.

4.4.5 Any repaired or new parts provided by the Company under this condition 4 will be delivered by the Company to the Customer free of charge. Any Equipment (or part) which has been returned to the Company and replaced by the Company shall become the property of the Company.

4.4.6 The Company reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs if the Company considers that the damage has resulted from misuse or unauthorised repair or alteration of the Equipment by the Customer or any third party, or from normal wear and tear.

4.4.7 Neither acknowledgement of receipt nor investigation, by the Company of any claim made hereunder shall constitute or imply admission by the Company of any liability in respect of such claim.

4.4.8 Save where the Customer has purchased Maintenance Services in respect of the relevant Equipment (in which case condition 6 shall apply) and subject to condition 13.5, the rights and remedies provided to the Customer under this condition 4.4, in connection with any defect in the Equipment resulting from faulty design, materials or manufacture or Installation or defect in the Installation shall be the Customer's exclusive remedies in respect of the same.

#### 4.5 TRADE MARKS AND BRANDING

4.5.1 The Company shall be entitled to fix legends bearing the Company's and/or its third party supplier's name and/or trade marks or other marks to any Equipment. The Customer shall ensure that no such marks are removed or defaced at any time.

### **5. DATA NETWORK SERVICES**

In the event that the section(s) relating to Data Network Services is/are completed on the relevant Order Form or in the event that the Company is providing Data Network Services to the Customer, this condition 5 shall apply to the Contract.

#### 5.1 DURATION OF DATA NETWORK SERVICES

5.1.1 The conditions referred to in condition 2.1.3.2 are:

5.1.1.1 the Company carrying out a survey which reveals to the Company's satisfaction that it is possible for the Company to supply the Data Network Services;

5.1.1.2 that the Company determines that any details or information used by the Company to determine the Charges applicable or any other terms of the Contract, whether supplied by the Customer or otherwise, are accurate and not misleading. The Charges may change depending on the results of such survey (including, without limit, where there are additional construction charges associated with a Site required to be incurred); and

5.1.1.3 the provision by the Company of confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Data Network Services do not contain any errors or omissions.

5.1.2 Unless the Customer terminates the Contract in accordance with condition 5.1.3 or the Customer is a Small Business Customer (in which case condition 5.1.4 shall apply) then, upon the expiry of the Minimum Term, the Contract will renew automatically for a Rollover Period.

5.1.3 Unless the Customer is a Small Business Customer (in which case condition 5.1.4 shall apply), the Customer may terminate the Contract by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or (if the Contract has automatically renewed under condition 5.1.2) upon the anniversary of such date thereafter. If the Customer does not elect to give notice to terminate the Contract during the Rollover Period, the Contract will continue to automatically renew for subsequent Rollover Periods on each anniversary of the date of the expiry of the Minimum Term.

5.1.4 Where the Customer is a Small Business Customer, the Customer may terminate the Contract by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term.

#### 5.2 PROVISION OF DATA NETWORK SERVICES

5.2.1 The Company shall use reasonable endeavours to provide the Data Network Services from the Connection Date subject to these Conditions. The Data Network Services may not be fault free and use of the Data Network Services may not be uninterrupted. The Company does not provide any commitment regarding the availability of the Data Network Services to the Customer (whether such Data Network Services and included on the Order Form or subsequently requested by the Customer through the Portal).

5.2.2 Subject to the continuing supply of the service by the relevant Carrier, in the event of a fault occurring in the Data Network Services the Company will use reasonable endeavours to rectify the fault as soon as practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Data Network Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by the relevant Carrier, or any known or unknown viruses which cause interruption or interference with the fixed network.

5.2.3 Except where stated on the Order Form, provision of the Data Network Services does not include the provision of any modems or other equipment.

5.2.4 The Customer acknowledges that the speed of any data connectivity in the Data Network Services depends on a number of factors including, but not limited to, distance from the exchange, local availability and network capacity and/or traffic levels. The Company shall have no liability to the Customer whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise if the Customer's circuit(s) or service(s) does/do not produce a top speed of the maximum speed advertised.

5.2.5 Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Data Network Services (or any part thereof) which do not have a material adverse effect on the Data Network Services and shall where the Company deems it practical to do so give the Customer written notification of the same.

#### 5.3. USE OF THE DATA NETWORK SERVICES

5.3.1 The Customer shall be responsible for safe use by it of the Data Network Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes:

(a) to use the Data Network Services in accordance with such additional conditions as may be notified to it in accordance with condition 19 from time to time;

(b) not to cause any attachments, other than those that meet the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (as from time to time amended) and any other requirements under the General Conditions and all other Relevant Laws, to be connected to the Data Network Services and the Company shall not be under any obligation to connect or keep connected any Customer apparatus if it does not so conform or if in the reasonable opinion of the Company it is liable to cause death, personal injury or damage or to impair the quality of the Data Network Service;

(c) not to contravene the General Conditions or any other relevant regulations or licences granted thereunder and otherwise not to contravene, and not by any act or omission, cause the Company to contravene, any Relevant Laws or General Conditions;

(d) not to use (and to procure that no end user of the Data Network Services shall use) the Data Network Service as a means of communication for a purpose other than that for which the Data Network Service is provided and as may be set out in any relevant literature supplied by the Company from time to time;

(e) not to use (and to procure that no end user of the Data Network Services shall use) the Data Network Service to make, provide, communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or

which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Data Network Services;

(f) not to use the Data Network Service in a manner which constitutes a violation or infringement of the rights of any other person;

(g) to maintain its telecommunications apparatus at all times during the period of the Contract in good working order and in conformity with any relevant regulatory standards or approvals and Relevant Laws for the item as from time to time applicable;

(h) to provide the Company with all such information as it reasonably requests relating to the Customer's telecommunications apparatus;

(i) to implement adequate control and security over the use of the Data Network Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access to the Data Network Services by hackers;

(j) not to use the Data Network Services in a way that breaches any Relevant Laws, any guidelines, regulations or instructions of OFCOM or any licence applicable to the Customer or that is in any way unlawful or fraudulent; and

(k) not to send or procure the sending of any unsolicited advertising or promotional material.

5.3.2 Any equipment installed or provided by or on behalf of the Company for the purposes of providing the Data Network Services and which is not for end use by the Customer shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request. Condition 4.3 shall apply to such equipment and for the purposes of this condition 5.3.2 only such equipment shall be deemed Equipment under those conditions. The Customer shall be liable to the Company for all losses, costs and expenses incurred by the Company for the recovery, replacement or repair of such equipment (save to the extent that the same is caused by the negligence of the Company).

5.3.3 The Data Network Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Data Network Services (or any part of them) to any third party. In addition, if the Customer has a mail server, the Customer must not allow relay emails from outside its domain from the Customer's mail server.

5.3.4 The Company does not warrant or guarantee the accuracy or completeness of any of the information, sound, video, software and/or any other materials (in whatever form) which may be accessible by the Customer from any other person once it has the Data Network Services (the "Content") or any further information or results which may be derived from it. The Customer acknowledges that, the Content is outside the control of the Company and the Customer will not rely on any Content in making any business or other decision and that the Customer's use of the Content is at the Customer's sole risk.

5.3.5 The Customer acknowledges that the Content may be protected by copyright, trademark and other intellectual property rights, as applicable. The Customer shall not and will not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.

5.3.6 The Customer is entirely responsible for evaluating any goods or services offered by third parties via the Services or on the internet. The Company will not be a party to or in any way be held responsible to the Customer for any transaction between the Customer and third parties.

5.3.7 The Customer warrants, represents and undertakes that any information the Customer makes available on its website, including the Customer's and that of a third party ("Third Party Content") is and will remain wholly accurate and will not include any information or material, any part of which, or the accessing of which or use of which, would be a criminal offence or is otherwise unlawful.

5.3.8 The Customer also warrants, represents and undertakes that it will comply with all consumer and other legislation, instructions or guidelines issued by regulatory authorities and relevant licences which relate to the provision of the information on the Customer's website including those notified by the Company to the Customer.

5.3.9 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner and/or OFCOM and their successors from time to time) in connection with any misuse or suspected misuse of the Data Network Services, and the Customer consents to the Company co-operating with any such authority and with any other telecommunications operators in connection with any misuse or suspected misuse or

suspected fraudulent activity related to or connected with the Data Network Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge any information which the Company holds which may be relevant to any investigation, including the name, address and account information relating to the Customer to such third parties.

5.3.10 The Customer acknowledges that the Data Network Services may utilise infrastructure which is also used for services provided to other users and the Company owes a duty to these users as a whole to preserve its network integrity and reduce network degradation. If, in the Company's reasonable opinion, the Company believes that the Customer's use of the Services has or may adversely affect such network integrity or may cause network degradation the Company may change the Customer's chosen access rate or manage the Customer's Services as the Company sees fit in the circumstances.

5.3.11 To prevent spam from entering and affecting the operation of the Company's systems and the Data Network Services, the Company may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. The Company may also use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. The Company shall have no liability whether in contract, tort (including without limitation negligence and breach of statutory duty) or otherwise if the virus screening technology is not completely effective in any way, including (without limitation) against unsolicited emails or against any viruses, worms, trojan horses or other programmes or devices that are apparently intended to access and modify, delete or damage data file(s) or computer programme(s).

5.3.12 The Customer shall comply with the Broadband Acceptable Use Policy. The Company may change the Broadband Acceptable Use Policy at any time by publishing the changes on its website ([www.daisygroup.com](http://www.daisygroup.com)) or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect.

5.3.13 The Customer will not misuse the Data Network Services in any way.

5.3.14 The Company has assumed that sufficient fibre and/or copper are available at each Site for the provision of the proposed Data Network Services. Excess construction charges levied by the Carrier for the delivery of ducts and/or fibre and/or copper into the building shall be the responsibility of the Customer.

5.3.15 The Customer acknowledges and understands that all bandwidths stated by the Company in relation to the Data Network Services are indicative of the maximum achievable at the stated location for a given service. The actual bandwidth provided will be subject to copper or fibre circuit length and quality, and will not be known until the circuit is provisioned and installed.

5.3.16 The Company shall not be liable to the Customer for any interruption, degradation or other failure in the Data Network Services to the extent such interruption, degradation or other failure arises directly or indirectly from:

- (a) the Customer's network or system, or any part thereof;
- (b) the Customer's and/or its agents', representatives' or users' negligent acts or omissions;
- (c) the Customer's breach of the Contract;
- (d) the Customer's failure or delay in complying with the Company's reasonable instructions and/or any failure or delay in providing information requested by the Company;
- (e) any delay in the Customer allowing the Company, its employees, agents or sub-contractors to enter into a Site and/or the applicable parts thereof to diagnose or remedy any fault;
- (f) anything beyond the reasonable control of the Company as defined more particularly in condition 13.4;
- (g) any encryption on any of the routers;
- (h) the Customer requesting the Company to modify a Site, or test one although no fault has been detected or reported in accordance with the terms of the Contract;
- (i) implementation of a configuration change;
- (j) planned outages advised to the Customer by the Company;
- (k) power outages at a Site;
- (l) relocation, reconfiguration, modification and/or reprogramming of any equipment related to the Data Network Services which is not undertaken by the Company unless completed under (and strictly in accordance with) the Company's instructions;

(m) suspension of the Services in accordance with the Contract;

(n) environmental conditions which are not within the tolerances prescribed by the relevant manufacturer's guidelines (for example, humidity, heat, dust, power);

(o) any fault in a circuit between the local exchange and the applicable Site where the Data Network Service at a Site includes circuits from dual carriers (using the same duct) and does not have the benefit of full fibre diversity into the Site from a single carrier; and/or

(p) any act or omission of any third party which is beyond the Company's reasonable control which shall include, without limitation, fibre cutting.

5.3.17 The Company shall not be liable for any costs, damages, expenses, losses or liabilities, which arise (whether arising in contract, tort (including without limitation negligence) or otherwise) (including but not limited to any failure or sub-standard performance of the Data Network Services or Equipment) as a result of the performance or non-performance of any equipment which the Customer uses as part of, or in connection with, the Data Network Services.

#### 5.4 TRANSFER FROM THIRD PARTY SUPPLIERS

5.4.1 Where the transfer of circuits and services from third party suppliers is selected by the Customer on the Order Form, then the Customer shall procure that such transfer is carried out. Daisy may levy additional charges on the Customer for to compensate Daisy for costs it incurs as a result of any such transfer (including without limitation facilitating the transfer of a circuit, providing access to Daisy's data centre(s) to third party suppliers and any internal patching which may be required).

5.4.2 The Customer and not the Company shall be liable for any charges (including without limitation any early termination charges) made by third party suppliers for any transfer of circuits or services or otherwise, unless it is clearly identified and agreed in writing on the Order Form at the time of the Company formally accepting such Order Form that the Company will pay for specified charges.

#### 5.5 VOICE OVER THE DATA NETWORK SERVICES

5.5.1 The Customer shall not use the Data Network Services for any voice services (including without limitation Voice over Internet Protocol (VoIP)) as the Data Network Services are not suitable and/or configured for any such services. The Company shall not be liable for any losses, liabilities or costs arising directly or indirectly from such use of the Data Network Services.

#### 5.6 DOMAIN NAMES

5.6.1 The Customer warrants, represents and undertakes that it is the owner of, or that it is authorised by the owner of, (and has the right to use) any trade mark or name that the Customer wishes to use as or in its registered domain name (or any of them) ("**Domain Names**") and/or as part of the Customer's uniform resource locator ("**URL**").

5.6.2 If the Company undertakes Domain Names and/or URL registration on behalf of the Customer, the Customer will reimburse the Company for any registration fees paid by the Company to the relevant internet registration authorities. The Company does not guarantee that any Domain Names or URL requested by the Customer will be available.

5.6.3 The Company may require the Customer to select replacement Domain Names or URL and may either refuse to provide or may suspend the Services if the Company reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or infringe the rights of a third party.

5.6.4 The Customer acknowledges and agrees that the registration of the requested Domain Name and its ongoing use by the Customer shall be subject to the relevant naming authority's terms and conditions of use (e.g. Nominet UK set out at <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration>, Network Solutions set out at <ftp://ftp.networksolutions.com/partners/Agreements/NetworkSolutionsServiceAgreement.pdf>, CentralNic set out at <https://www.centralnic.com/support/terms/domains> and JANET set out at <https://community.ja.net/library/janet-services-documentation/>) and the Customer hereby undertakes and warrants to comply with such terms and conditions. The Company accepts no responsibility whatsoever in respect of the use of the Customer's requested Domain Name by the Customer or any other person. Any dispute between the Customer and any third party (including without limitation any naming authority) regarding a Domain Name must be resolved between such parties and the Customer shall indemnify the Company against any such action. The Company will take no part in any such dispute

unless required to do so by law. On becoming aware of such a dispute concerning a Domain Name the Company hereby reserves the right at its sole discretion without notice to suspend or cancel the relevant services associated with the Domain Name dispute.

#### 5.7 DISPUTE RESOLUTION

5.7.1 The Company will attempt to resolve any dispute that the Customer may have with the Company. Any disputes must be notified by the Customer to the Company in accordance with the complaints procedures at [www.daisygroup.com](http://www.daisygroup.com) (or at such other URL as is notified to the Customer by the Company from time to time). If the dispute cannot be resolved within 8 weeks of the Customer raising the dispute with the Company (pursuant to those procedures) then the Customer may refer the matter to:

(a) Ombudsman Services - Communications, via the website [www.ombudsman-services.org/](http://www.ombudsman-services.org/) or by telephone on 0330 440 1614; or

(b) OFCOM, the communications regulator via the website [www.ofcom.org.uk](http://www.ofcom.org.uk) or by telephone on 0300 123 333 or 0207 981 3040.

5.7.2 Nothing in this condition 5.7 shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

#### 6. MAINTENANCE SERVICES

In the event that the section relating to Maintenance Services is completed on the relevant Order Form or in the event that the Company is providing Maintenance Services to the Customer, this condition 6 shall apply to the Contract.

##### 6.1 DURATION OF MAINTENANCE SERVICES

6.1.1 The condition referred to in condition 2.1.3.3 is that the Company provides confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Maintenance Services do not contain any errors or omissions.

6.1.2 Subject to earlier termination in accordance with its terms, the Contract for Maintenance Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, the Contract in relation to the Maintenance Services will renew automatically for a Rollover Period.

6.1.3 The Customer may terminate the Contract in relation to the Maintenance Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or (if the Contract has automatically renewed under condition 6.1.2) upon the anniversary of such date thereafter. If the Customer does not elect to give notice to terminate the Contract during the Rollover Period, the Contract will continue to automatically renew for subsequent Rollover Periods on each anniversary of the date of the expiry of the Minimum Term.

##### 6.2 PROVISION OF MAINTENANCE SERVICES

6.2.1 In consideration of (and subject to) the payment of the Annual Support Charge each year by the Customer, the Company shall use reasonable endeavours to supply the Maintenance Services to the Customer in accordance with the Contract.

6.2.2 The Maintenance Services shall apply only in respect of the Equipment expressly stated on the Order Form to be subject to the Maintenance Services (and any other equipment which is similarly stated on the Order Form which shall be deemed to be 'Equipment' for the purposes of this condition 6).

6.2.3 Unless it is otherwise stated on the Order Form that a different level of Service (in terms of response times and hours of attendance) will apply, the Company will use its reasonable endeavours to, within two Business Days of receipt of notification from the Customer of a request for the provision of Maintenance Services and the Equipment being made available, commence the Maintenance Services during Normal Working Hours. Any time period stated in respect of the Company's obligations under a Contract is not guaranteed nor deemed to be of the essence of the Contract.

6.2.4 Where the Company replaces defective Equipment or part thereof, it shall be entitled to supply serviceable reconditioned items in substitution thereof. These Conditions shall continue to apply to the Equipment embodying such substituted items.

6.2.5 The Company does not warrant that the provision of Maintenance Services (or any additional services supplied pursuant to conditions 6.3.1 or 6.3.2) will ensure that the Equipment operates without interruption or error.

6.2.6 Subject to spare part availability, the Company shall provide all necessary spare parts (in the reasonable opinion of the Company) required to keep the Equipment in satisfactory operation. All replaced parts shall become the property of the Company.

6.2.7 Subject to condition 6.3.1, Maintenance Services shall not include the following (the "Excepted Services"):

- (a) the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the Company or the original Equipment manufacturer) regarding the operation of the Equipment);
- (b) labour or materials required to repair Equipment as a result of theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line conditions, network conditions, the connection or installation of unapproved accessories, attachments, software, or other devices or as a result of a breach by the Customer of condition 6.5;
- (c) the alteration, modification or maintenance of the Equipment by any person other than the Company without the Company's prior written consent;
- (d) the transportation or relocation of the Equipment save where the same has been performed at the request of the Company;
- (e) the maintenance or repair of any extension wiring (after the initial twelve month warranty period under condition 4.4.1 has passed), any Equipment not at the Site, or of anything other than the Equipment;
- (f) any defect or error in any software used upon or in association with the Equipment;
- (g) the supply of replacement cassettes, aeriels, aerial systems and batteries;
- (h) the reprogramming of the Equipment to provide improved or modified service or facilities;
- (i) Equipment faults caused by telephone area code changes or changes in Carriers;
- (j) ancillary items including but not limited to computers, servers, uninterruptible power supplies, batteries, printers, cabinets, any cabling and/or consumables unless otherwise agreed in writing;
- (k) maintenance arising from loss of equipment as the Maintenance Services are limited to repair or replacement of faulty equipment on a like-for-like exchange basis; and/or
- (l) a dedicated helpdesk.

6.2.8 Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Maintenance Services (or any part thereof) which do not have a material adverse effect on the Maintenance Services and shall where the Company deems it practical to do so give the Customer written notification of the same.

### 6.3 ADDITIONAL CHARGES

6.3.1 The Company may, in its sole and absolute discretion, upon request by the Customer provide all or any of the Excepted Services (as referred to in condition 6.2.6 above) but shall be entitled to charge for the same by levying Additional Charges (which may include but shall not be limited to call-out charges) in the manner described in condition 6.3.3 below.

6.3.2 Without prejudice to condition 6.3.1 above the Company shall be entitled to levy (and receive from the Customer) Additional Charges in the manner described in condition 6.3.3 below if:

- (a) Maintenance Services are provided in circumstances where any person which is reasonably skilled and competent in the field of maintaining communications equipment would have judged the Customer's request to have been unnecessary; and/or
- (b) the Customer reports an apparent fault of the Equipment to the Company and upon investigation by the Company the Equipment and/or its Installation is found not to be defective. Such Additional Charges may include (without limitation) a charge for the investigation and/or for any call-out and for any Equipment changed in a postal exchange where the Company reserves the right to make a charge up to the replacement value of the Equipment in question); and/or
- (c) where the Company determines that a fault that has been reported to the Company is a fault of the Carrier.

6.3.3 Additional Charges shall be levied by the Company as follows:

- (a) following completion of the Excepted Services supplied under condition 6.3.1 or Additional Services under condition 6.3.2(a); or

- (b) following completion of the investigation and/or call out in respect of condition 6.3.2(b) and 6.3.2(c).

Such Additional Charges (calculated in accordance with the Tariff prevailing at the time) shall be payable by the Customer within ten days of the date of an invoice.

### 6.4 DISCONTINUED SERVICES

6.4.1 Without prejudice to condition 16 or any other right of suspension or termination of Services under these Conditions, the Company shall have the right to discontinue the Maintenance Services in respect of any Equipment (without liability to the Customer) in the event that the Company's supplier and/or the manufacturer of the Equipment has ceased to supply or manufacture such Equipment provided that the Company shall notify the Customer as soon as reasonably practical after it is aware of any cessation in supply or manufacture of the Equipment and shall either (upon agreement with the Customer) (i) terminate the Contract; or (ii) replace or upgrade the affected Equipment at the Customer's expense.

6.4.2 Without prejudice to condition 15 or any other right to terminate any Services under these Conditions, the Company shall have the right to terminate forthwith the supply of the Maintenance Services (without liability to the Customer) in the event that any necessary approvals required by the Company to maintain any of the Equipment are not granted or revoked by any government or regulatory agencies or any third party.

6.5 The Customer shall:

- 6.5.1 ensure that the Equipment is used in a normal and proper manner;
- 6.5.2 take all steps, measures and meet all requirements contained in the customer operating instructions and manufacturer's written recommendations supplied with the Equipment ("User Instructions");
- 6.5.3 carry out minor maintenance adjustments suggested by the Company which includes minor programming changes with telephone support and replacement of handsets and cords which are relayed by courier or post;
- 6.5.4 not carry out or permit any alteration to call routing apparatus or extension wiring (except by the Company, or by the Company's authorised agents), save that in relation to the connection of other apparatus to the Equipment, such connection may be performed by another person at the Customer's expense if either
  - (a) the Company so agrees in writing, or
  - (b) the Company fails to carry out the connection itself within twenty-eight days after receiving written notice from the Customer stating that the Customer wishes specified apparatus to be so connected and naming that other person by whom the Customer wishes the connection to be performed;
- 6.5.5 appoint at least one member of its staff as a "Principal Operator", who will be trained in the use of the Equipment. The Customer will ensure that such Principal Operator is available to carry out the instructions in the User Instructions and to liaise on Maintenance Services matters with the Company;
- 6.5.6 not employ or permit a third party to make any alterations to the programming or physical structure of the Equipment;

6.6 If the Equipment is not (immediately prior to the Commencement Date) either already maintained by the Company or within the scope of an express warranty given by the supplier thereof, then the Company may at its discretion inspect the Equipment and undertake such repair work as may be necessary to put the Equipment in good working order. The Customer shall pay for such inspection and repair at the Company's then current charge rates applying at that time, and such payment shall be in addition to the Annual Support Charge.

6.7 CHANGE OF LOCATION

6.7.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of the Company, (such consent not to be unreasonably withheld). Where the Company consents to such relocation, the Company will provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with the Company's then current Tariff, and such payment shall be in addition to the Annual Support Charge.

### 7. HOSTING SERVICES

6.7.1 The Customer will not move any of the Equipment, nor remove the Equipment from its location as at the Commencement Date without the prior written consent of the Company, (such consent not to be unreasonably withheld). Where the Company consents to such relocation, the Company will provide a relocation and installation service, the cost of which shall be paid by the Customer in accordance with the Company's then current Tariff, and such payment shall be in addition to the Annual Support Charge.

### 7. HOSTING SERVICES

In the event that the section relating to Hosting Services is completed on the relevant Order Form or in the event that the Company is providing Hosting Services to the Customer, this condition 7 shall apply to the Contract.

#### 7.1 DURATION OF HOSTING SERVICES

7.1.1 The condition referred to in condition 2.1.3.4 is that the Company provides confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Hosting Services do not contain any errors or omissions.

7.1.2 Subject to earlier termination in accordance with its terms, the Contract for Hosting Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract in relation to the Hosting Services will renew automatically for a Rollover Period.

7.1.3 The Customer may terminate the Contract in relation to the Hosting Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or upon each anniversary of such date thereafter (as applicable). If the Customer does not elect to give notice to terminate the Contract during the Rollover Period, the Contract will continue to automatically renew for subsequent Rollover Periods on each anniversary of the date of the expiry of the Minimum Term.

#### 7.2 PROVISION OF HOSTING SERVICES

7.2.1 In consideration of (and subject to) the payment of the Annual Hosting Charge by the Customer, the Company shall use reasonable endeavours to provide the Hosting Services from the Commencement Date subject to these Conditions. The Hosting Services may not be fault free and may not be uninterrupted.

7.2.2 The Company will use reasonable endeavours to rectify any fault in the Hosting Services as soon as practicable however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the Hosting Services whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused including but not limited to atmospheric conditions; any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by a Carrier or other service provider, or any known or unknown viruses which cause interruption or interference.

7.2.3 The Customer shall:

7.2.3.1 not use the Hosting Services to make, provide, communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Hosting Services;

7.2.3.2 not use the Hosting Services in a manner which constitutes a violation or infringement of the rights of any other person;

7.2.3.3 implement adequate control and security over the use of the Hosting Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access to the Hosting Services by hackers;

7.2.3.4 not use the Hosting Services in a way that breaches any Relevant Laws, any guidelines, regulations or instructions of any regulator or any licence applicable to the Customer or that is in any way unlawful or fraudulent;

7.2.3.5 not conduct any unauthorised monitoring of, or access to, or use of data, networks or systems, including any attempt to probe, scan or test the vulnerability of a network and/or system or to breach security or authentication measures without proper authorisation;

7.2.3.6 not interfere with, disrupt or disable any service to any user, host or network via means including but not limited to overloading, flooding, mail-bombing, denial of service attacks or crashing;

7.2.3.7 not use manual or electronic means to avoid any use limitations placed on a system, such as access or storage restrictions; and

7.2.3.8 not attempt to circumvent or alter any method of measuring or billing for the Hosting Services.

7.3 The Hosting Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Hosting Services (or any part of them) to any third party.

7.4 The Company shall not be liable to the Customer for any interruption or other failure in the Hosting Services to the extent that such interruption or failure arises directly or indirectly from:

7.4.1 the IT Equipment, the Customer's network or system or any part thereof;

7.4.2 any act or omission of the Customer, its agents, representatives or users;

7.4.3 the Customer's breach of the Contract;

7.4.4 the Customer's failure or delay in complying with the Company's reasonable instructions and/or failure or delay in providing any information requested by the Company;

7.4.5 anything beyond the reasonable control of the Company as defined more particularly in condition 13.4;

7.4.6 planned outages, server relocation, or maintenance advised to the Customer by the Company;

7.4.7 server maintenance or application maintenance carried out by the Customer or by the Company on the Customer's instructions; and/or

7.4.8 suspension of the Hosting Services in accordance with the Contract.

7.5 In the event that the Customer requires access to the Facility in which the Hosting Services are performed, condition 8.5 shall apply.

7.6 The Company may at any time change the location of the Facility in which Hosting Services are performed upon notice to the Customer.

7.7 In the event of termination or expiry of a Contract for Hosting Services, the Company shall (at the Company's option) return or delete all data which is held by the Company in connection with the Hosting Services. Save in the event of expiry, or termination by the Company without cause, the Customer shall be liable for all costs which the Company incurs in returning or deleting the Hosted Data.

7.8 Unless the Customer purchases back-up services from the Company, the Company shall not be obliged to perform a back-up or otherwise replicate any of the content which the Customer provides to the Company as part of the Hosting Services.

7.9 Notwithstanding any other provision of this Contract, the Customer's exclusive remedy for any breach of this condition 7 by the Company and/or for any negligence, default or breach of duty by the Company which leads to loss or corruption of Hosted Data shall be for Daisy to restore the Hosted Data to the most recent unimpaired and uncorrupted generation of Hosted Data created prior to such breach, negligence or default.

7.10 Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Hosting Services (or any part thereof) which do not have a material adverse effect on the Hosting Services and shall where the Company deems it practical to do so give the Customer written notification of the same.

#### **8. CO-LOCATION SERVICES**

In the event that the section relating to Co-Location Services is completed on the relevant Order Form or in the event that the Company is providing Co-Location Services to the Customer, this condition 8 shall apply to the Contract.

#### 8.1 DURATION OF CO-LOCATION SERVICES

8.1.1 The condition referred to in condition 2.1.3.5 is that the Company provides confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract for Co-Location Services do not contain any errors or omissions.

8.1.2 Subject to earlier termination in accordance with its terms, the Contract for Co-Location Services shall run for the Minimum Term. Upon the expiry of the Minimum Term, or any anniversary thereafter, the Contract in relation to the Co-Location Services will renew automatically for a Rollover Period.

8.1.3 The Customer may terminate the Contract in relation to the Co-Location Services by giving ninety days' notice in writing to the Company, such notice to become effective no earlier than the expiry of the Minimum Term or upon each anniversary of such date thereafter (as applicable). If the Customer does not elect to give notice to terminate the Contract during the Rollover Period, the Contract will continue to automatically renew for subsequent Rollover Periods on each anniversary of the date of the expiry of the Minimum Term.

#### 8.2 PROVISION OF THE CO-LOCATION SERVICES

8.2.1 In consideration of (and subject to) the payment of the Co-Location Charges, the Company shall use reasonable endeavours to supply to the Customer the Co-Location



Services in accordance with the Contract. Any Co-Location Services shall be provided with reasonable skill and care

8.2.2 Unless otherwise agreed between the parties and set out on the Order Form, the Customer shall provide and supply the Rack to be installed in the Co-Location Space, which shall include all components utilised within the Rack to ensure it is fully useable (for example, but not limited to, power bars, rack mounts and cooling fans).

8.2.3 The Customer shall at its own expense ensure that the Rack(s) and the Co-Location Space comply with all Relevant Laws. The Racks shall be kept in good repair and shall at all times meet the minimum specification for Racks (if any) required by the Company;

8.2.4 The Customer shall not cause and shall procure that the Customer's agents and employees shall not cause or permit any nuisance or violation of applicable laws, rules regulations of ordinances with respect to the Facility.

8.2.5 The Customer undertakes to inform the Company if it becomes aware of any faults or matters likely to compromise the security of the Co-Location Services (including, without limitation, any disclosure of access or information to a third party). The Customer shall provide a central help desk to communicate to the Company.

8.2.6 The Customer shall not make any additions or alterations to the Co-Location Space without prior written consent from the Company except for:

8.2.6.1 Installation, maintenance or removal of IT Equipment;

8.2.6.2 Upgrades to existing Racks for example new power bars, or replacement of Racks;

8.2.6.3 Installation of new caged areas within the Co-Location Space providing the new caged areas do not restrict the Company's access to the Facility or affect the operation of the Facility in any way.

8.2.7 Notwithstanding condition 8.2.6, the Customer shall not change or remove any cabling within the Facility without the Company's prior written consent.

8.2.8 All installations, additions or alterations made by the Customer to the Co-Location Space will need to be 'made-good' at the Customer's expense to the satisfaction of the Company upon termination (for any reason) or expiry of the Contract to return the Co-Location Space to the layout and condition it was in at the Commencement Date.

8.2.9 Any alterations made on the request of the Customer shall be carried out at the Customer's expense.

8.2.10 The Customer will not make any additions or alterations to mechanical or engineering equipment within the Facility without prior written consent from the Company.

8.2.11 The Customer will engage the Company to make any changes to mechanical or engineering equipment owned by the Company.

8.2.12 The Customer shall comply with all reasonable instructions relating to the Co-Location Services issued by the Company from time to time.

8.2.13 The Company shall only route existing TCP/IP addresses that were previously assigned to the Customer if those addresses were assigned to the Customer directly and not through another internet service provider. The Company shall have no liability to the Customer (howsoever arising) if other internet service providers refuse to accept these addresses. The Company shall assign new or additional TCP/IP addresses requested by the Customer upon the Customer providing to the Company satisfactory documentation (in the Company's opinion) to justify the need for those addresses.

8.2.14 The documentation referred to in condition 8.2.13 must be in accordance with the policies set forth by the RIPE Network Co-ordination Centre ("**RIPE**") (or such other organisation that assigns TCP/IP addresses for use by internet providers and their customers in Europe, from time to time). In certain circumstances it may be necessary for TCP/IP addresses to be approved by RIPE, and in such cases the Company shall have no liability to the Customer for any decision made by RIPE. When the Company assigns TCP/IP addresses to the Customer, those addresses are assigned only for the duration of the Services and shall become invalid at such time as the Company no longer provides the Services to the Customer.

8.2.15 After termination or expiry of this Contract, the Company may re-assign, to other customers, TCP/IP addresses which have been previously assigned to the Customer. If the Customer wishes to apply for TCP/IP addresses that shall subsist beyond the duration of the Services, the Customer must do so directly to RIPE. Any decision by RIPE or by another internet service provider relating to TCP/IP addresses is the responsibility of RIPE

or of that other internet service provider and the Company shall have no liability in respect of that decision.

8.2.16 The Customer shall not change, modify, delete, or disable the TCP or IP addresses set up by the Company on the Customer's systems, without the express approval of the Company.

8.2.17 Unless the Customer purchases back-up services from the Company, the Company shall not be obliged to perform a back-up or otherwise replicate any of the content which the Customer provides to the Company as part of the Co-Location Services.

8.2.18 Notwithstanding any other provision of this Contract, the Customer's exclusive remedy for any breach of this condition 8 by the Company and/or for any negligence, default or breach of duty by the Company which leads to loss or corruption of data stored in the Facility shall be for the Company to restore such data to the most recent unimpaired and uncorrupted generation of the data created prior to such breach, negligence or default.

8.2.19 If the Customer exceeds the Estimated Power Draw the Company shall be entitled to charge for excess usage. Any such charges for power draw which exceeded the Estimated Power Draw shall be payable by the Customer monthly in arrears.

8.2.20 Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Co-Location Services (or any part thereof) which do not have a material adverse effect on the Co-Location Services and shall where the Company deems it practical to do so give the Customer written notification of the same.

### 8.3 REMOTE HANDS AND EYES.

8.3.1 Remote Hands and Eyes includes the following:-

8.3.1.1 Visual inspection of devices to access equipment states (e.g. status, lights, power lights, and cabling) or identifying information (e.g. serial numbers) and report on observations back to the Customer;

8.3.1.2 Viewing of monitors and report of screen data back to the Customer;

8.3.1.3 Rebooting of routers, servers or other Customer equipment where the Customer provides written directions to the Company;

8.3.1.4 Pressing of "any key" to clear a screensaver;

8.3.1.5 Toggling switches or pressing buttons under the instruction of the Customer, where those switches or buttons are clearly marked;

8.3.1.6 Plugging in look-back cables at Customer provided test point, providing a hard loop for the Customer to test circuits remotely;

8.3.1.7 Re-seating or replacing components that are hot-swappable and modular, provided that tools are required;

8.3.1.8 Re-seating or replacing cables connecting the IT Equipment (replacement cables provided by the Customer); and

8.3.1.9 Disconnecting systems from the network in the event of a network security event.

8.3.2 Remote Hands and Eyes Services are only performed at the instruction of the Customer. These instructions may be scheduled or come on an "as needed basis".

8.3.3 The Company will use reasonable endeavours to provide Remote Hands and Eyes services to the Customer at all times and will use reasonable endeavours to respond to requests for Remote Hands and Eyes service requests within 2 hours of requests being made during Normal Working Hours and within 4 hours of requests being made outside of Normal Working Hours.

8.3.4 If a Remote Hands and Eyes service request is made at a time when a the Company's engineer is unable to provide the requested services, the Customer will be informed and the work will be scheduled to be performed at a time when the Company's engineer is able to provide the requested services.

8.3.5 If the Customer requests that, as part of Remote Hands and Eyes, the Company provides spare parts and replaces components in the IT Equipment, the Company shall use reasonable endeavours to procure such spare parts and carry out such replacement. The costs of such procurement and replacement shall be borne by the Customer. When paid for in full, any new parts shall become the property of the Customer. Any parts so replaced shall become the property of the Company.

8.3.6 For the avoidance of doubt, Remote Hands and Eyes shall not include the following:

8.3.6.1 performance of software or hardware configuration changes to the equipment in the Rack;

8.3.6.2 any initial installation of the cabling or power sockets for the Rack equipment; and

the opening up of any equipment cases to determine any hardware faults.

#### 8.4 IT EQUIPMENT

8.4.1 The IT Equipment shall be and shall remain the sole property of the Customer.

8.4.2 For the duration of the Term, the Customer shall procure and maintain appropriate insurance policies in respect of the IT Equipment with a reputable insurer and shall provide the Company with evidence of the insurance at the Company's request.

8.4.3 The Customer shall ensure that the IT Equipment is capable of utilising dual power sources and the Customer shall ensure that the IT Equipment is plugged directly into both the A power strip and the B power strip. The Customer shall also ensure that any cabling used by the Customer meets national electrical and fire standards.

8.4.4 The Customer must ensure that the IT Equipment power draw does not exceed 70% at continuous load of the maximum power strip rating (peak load) specified on the Order.

8.4.5 The Customer shall maintain an up to date inventory of the IT Equipment installed in the Co-Location Space and provide the Company with a copy on request. The Customer shall ensure that the IT Equipment is clearly identified as belonging to the Customer and the IT Equipment conforms to Relevant Laws and any environmental and operational requirements specified by the Company in writing from time to time.

#### 8.5 ACCESS PROCEDURES

8.5.1 The provisions of this condition 8.5 shall apply when the Customer (and those acting for or on behalf of the Customer) wish to access the Facility.

8.5.2 If the Customer requires a third party to access the Facility, the Customer shall make the request to the Company through the Customer's Portal.

8.5.3 To make an access request the Customer will log on to its Portal and select the "Data Centre Access Request" option.

8.5.4 The Customer must complete and submit the "Data Centre Access Request" screen, including the following mandatory information:

8.5.4.1 the name of the Customer requiring access;

8.5.4.2 the names of the individuals requiring access;

8.5.4.3 E-mail address and telephone number of person requesting access

8.5.4.4 Date and time of arrival

8.5.4.5 Expected duration of visit;

8.5.4.6 Customer contact authorising access.

8.5.6 When the requested individual(s) arrives at the Facility, they must have:

8.5.6.1 the Company's ticket reference allocated by the Company's service desk;

8.5.6.2 personal photographic identification such as a valid passport, government ID or driving licence.

8.5.7 the Company will correlate the Customer authorisation number, the Company's authorisation number/e-mail and the authorised access names from the Customer. The Company will provide a temporary access card for use on that day only.

8.5.8 Failure to comply with this condition 8.5 will result in access being denied at the Company's absolute discretion.

#### 8.6 Access Schedule

8.6.1 The Company will use reasonable endeavours to meet the Customer's requests for access at the times required. For emergency maintenance, the Company will use reasonable endeavours to grant immediate access. Any non-emergency work (i.e. any work to be carried out on equipment which is not business critical) is to be arranged with not less than four hours' notice.

#### 8.7 Requesting Remote Hands and Eyes

8.7.1 In addition to requesting physical access to the IT Equipment, the Company's service desk can also be contacted to arrange Remote Hands and Eyes Service on the IT Equipment. Any such assistance required in excess of any Remote Hands and Eyes allowance agreed between the Company and the Customer will be chargeable in accordance with the Company's hourly rate set out on the Order Form.

#### 8.8 Deliveries to the Facility

8.8.1 All requests for equipment to be delivered to the Facility should be made by emailing the Company's Service Desk on servicedesk1@daisydcs.com and the Customer shall give not less than 24 hours' notice.

8.8.2 The Customer shall clearly mark all deliveries with the following information:-

8.8.2.1 Owner company name;

8.8.2.2 Owner name;

8.8.2.3 Owner email addresses and telephone number.

8.8.2.4 Any other comments.

8.8.3 The Customer shall accept deliveries into their custody within 24 hours of any delivery to the Facility. The Company will not be responsible for any delivery that does not conform to the requirements of condition 8.8.2.

8.8.4 The Company may charge for storage beyond 24 hours from the point of delivery.

8.8.5 Subject to condition 13.5, the Company shall have no liability for any loss of or damage to, items which are delivered to the Facility for or on behalf of the Customer.

8.8.6 The Customer shall remove all packing materials in which the IT Equipment (or any other items) are delivered as soon as reasonably practicable to do so.

8.8.7 The Customer grants the Company a lien over the IT Equipment to secure all sums due, owing to or incurred by the Company under this Contract and such lien shall continue and the Company shall be entitled to possession of all the IT Equipment (and the Customer shall not be entitled to remove the IT Equipment from the Facility until the Company has received all such sums in cleared funds.

#### 8.9 Facility Rules and Regulations

8.9.1 The Customer shall comply with, and ensure that all visitors to the Facility comply with the following rules:

8.9.1.1 Not to access the Facility until properly inducted and/or briefed on the site rules and local Health and Safety and Security procedures;

8.9.1.2 Not to create or cause to be created works that create smoke, steam or dust without first obtaining the written consent of the Company;

8.9.1.3 Not to interfere or permit the interference with or remove any fire-fighting, fire alarm, fire extinguishing or fire detection apparatus or systems;

8.9.1.4 Not to obstruct or permit the obstruction of fire exits or the means of working of any fire equipment;

8.9.1.5 Not to conduct work in the floor, ceilings or wall voids without the express written authority from the Company;

8.9.1.6 Not to eat or drink or bring into the Co-Location Space any such items to be consumed or otherwise for later consumption;

8.9.1.7 Not to interfere or permit the interference with or the removal of any building system controls or settings;

8.9.1.8 Not to act in such a way as might invalidate the fire certificate for the Facility;

8.9.1.9 Not to interfere with, alter or dismantle, take or permit any action to be taken (other than as may have been expressly agreed with the Company in writing) which might affect the operation of the electrical system, power supply, cooling supply at the Facility;

8.9.1.10 Not to install, impose nor permit to be installed or imposed on any part of the floors, walls, ceilings any load or weight greater than that for which the same was constructed or designed;

8.9.1.11 Not to keep nor permit to be kept any material or liquid (or other substance which could have an adverse environmental impact) of a dangerous, corrosive, combustible, explosive, radioactive, volatile or offensive nature which might damage the Facility or any part thereof;

8.9.1.12 Not to bring onto the Facility any propane, other gas heater or other heating appliance or anything which uses gas or other explosive materials as its fuel for operation;

8.9.1.13 To use all equipment and services in accordance with their instructions, operating guidelines and/or any reasonable instructions issued by the Company from time to time in relation to the same;

8.9.1.14 Not by any act or default to cause or permit to be caused the services, power supply or electrical supply or other utilities provided to the Facility, or part or parts or the whole of a system for the same serving or within the Facility to be overloaded or subjected to use in excess of that for which the same were designed or which may restrict the level of supply of such services to a part or parts and/or the whole system or other parts of the Facility provided that any loading restrictions have been notified to you in writing by the Company;

8.9.1.15 If any visitor shall receive any notices from a competent authority relating to the Facility (whether in whole or in part), it shall forward such notices to the Company as soon as is reasonably possible;

8.9.1.16 not to do anything or permit to be done anything which would remove support from or endanger any part of the Facility;

8.9.1.17 To ensure, when exiting the Facility, that all doors are shut, lights switched off and window blinds closed when expected to do so;

8.9.1.18 to leave the Facility immediately upon hearing the fire suppression klaxon (continuous air horn);

8.9.1.19 to report any observed abnormal conditions to the Company;

8.9.1.20 not to remove any signage or other documentation of the Company or its customers from the Facility;

8.9.1.21 not to smoke in any part of the Facility other than the area that is explicitly identified for this purpose;

8.9.1.22 not to touch, handle or interfere with any other item of equipment that is not explicitly belonging directly to the Customer;

8.9.1.23 not prop open any of the Facility security, fire or engineering doors;

8.9.1.24 not use the premises so as to cause a nuisance, annoyance, disturbance, inconvenience or damage to the Company or its other customers or other occupiers of the Facility or to neighbouring premises;

8.9.1.25 not load the floors, walls, ceilings, or structure of the Facility so as to cause strain, damage or interference with the structural parts, loadbearing framework, roof, foundations, joists and external walls of the Facility;

8.9.1.26 not overload the lifts, electrical installations or service media in the Co-Location Space and/or Facility;

8.9.1.27 not leave any articles, equipment or merchandise in front of the Facility or in any communal parts of the Facility;

8.9.1.28 not obstruct the common areas of the Facility whether internally or externally;

8.9.1.29 not use any portion of the access roads or service area for the parking of vehicles or in any way obstruct the access roads otherwise than during the course of loading and unloading;

8.9.1.30 not load or unload vehicles except in the servicing areas or loading bays provided for such purpose;

8.9.1.31 photography and filming, of any kind, inside the Facility is prohibited;

8.9.1.32 not bring any prohibited material into the Facility. Prohibited materials include, but are not limited to explosives or weapons; hazardous materials; alcohol, illegal drugs or other intoxicants; electro-magnetic devices that could unreasonably interfere with computer and telecommunications equipment; radioactive materials; and photographic or recording equipment of any kind (other than data back-up equipment);and

8.9.1.33 not to use any UMTS (Universal Mobile Telecommunications System), GSM (Global System for Mobile Communications), GPRS (General packet radio service) or other communication devices that work through radio communication (Radio Devices). Visitors to the Facility are required to switch off Radio Devices.

8.10 Review

8.10.1 The Company reserves the right to alter condition 8.9 and will give the Customer 14 days' notice of any amendment.

8.11 The Co-Location Services are provided solely for the Customer's use and the Customer may not resell or attempt to resell the Co-Location Services (or any part of them) to any third party.

8.12 The Customer shall not misuse the Co-Location Services in any way.

8.13 The Customer shall:

8.13.1 not use the Co-Location Services to make, provide, communicate, deliver, knowingly receive, upload, download, use or re-use any material or information which is intended to be a hoax or is of a defamatory, offensive, abusive, indecent, obscene or menacing character, or which does or is intended to cause annoyance, nuisance inconvenience or worry to any person or which in the Company's opinion brings the Company's name into disrepute or which in any way causes damage to or disruption to the Co-Location Services;

8.13.2 not use the Co-Location Services in a manner which constitutes a violation or infringement of the rights of any other person;

8.13.3 implement adequate control and security over the use of the Co-Location Services provided to the Customer including but not limited to the prevention of viruses, worms, Trojan horses and/ or any access by hackers;

8.13.4 not use the Co-Location Services in a way that breaches any Relevant Laws, guidelines, regulations or instructions of any regulator or any licence applicable to the Customer or that is in any way unlawful or fraudulent;

8.13.5 not conduct any unauthorised monitoring of, or access to, or use of data, networks or systems, including any attempt to probe, scan or test the vulnerability of a network and/or system or to breach security or authentication measures without proper authorisation;

8.13.6 not interfere with, disrupt or disable any service to any user, host or network via means including but not limited to overloading, flooding, mail-bombing, denial of service attacks or crashing;

8.13.7 not use manual or electronic means to avoid any use limitations placed on a system, such as access or storage restrictions; or

8.13.8 not attempt to circumvent or alter any method of measuring or billing for the Co-Location Services.

8.14 The Company shall not be liable to the Customer for any interruption or other failure in the Co-Location Services to the extent that such interruption or failure arises directly or indirectly from:

8.14.1 the Customer's network, Racks, or system or any part thereof;

8.14.2 any act or omission of the Customer and/or its agents, representatives or users;

8.14.3 the Customer's breach of the Contract;

8.13.4 the Customer's failure or delay in complying with the Company's reasonable instructions and/or failure or delay in providing any information requested by the Company

8.13.5 anything beyond the reasonable control of the Company as defined more particularly in condition 13.4;

8.13.6 planned outages, server relocation or maintenance advised to the Customer by the Company;

8.13.7 server maintenance or application maintenance carried out by the Customer or by the Company on the Customer's instructions; and/or

8.13.8 suspension of the Co-Location Services in accordance with the Contract.

8.14 The Company may at any time change the location of, or within the Facility in which Co-Location Services are performed or Co-Location Space is provided upon notice to the Customer, and the Company may require the Customer to relocate some or all of the IT Equipment accordingly.

8.15 Following termination (however caused) or expiry of the Contract, the Customer shall remove, from the Facility, within seven (7) days of such termination or expiry any and all of the IT Equipment and all other materials owned by the Customer. If the Customer does not remove such equipment and materials within such seven (7) day period, the Company shall be entitled to remove and dispose of the same at the cost of the Customer.

8.16 Notwithstanding any other provision of this Contract, the Customer's exclusive remedy for any breach of this condition 8 and/or for any negligence, default or breach of duty by the Company which leads to loss or corruption of data held by the Customer in the Facility shall be for the Company to restore such data to the most recent unimpaired and uncorrupted generation of such data created prior to such breach, negligence or default (to the extent reasonably possible and providing the Customer provides all necessary support to the Company).

## **9. FINANCE AND CREDIT**

9.1 The Customer hereby consents to and shall procure that its owners, directors, officers and assigns consent to, the Company carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, directors, officers and assigns and the Customer shall, upon the Company's request promptly supply or procure the supply of all information requested for a credit search with a credit reference agency, who will add to the Customer's records and/or those records of its directors, officers and assigns details of the searches and these will be seen by other organisations that make searches.

9.2 It is agreed that where the Company approaches a finance provider or lease provider to arrange finance for the purchase or leasing of Equipment then the Company acts as an agent for the Customer and not for the finance provider or lease provider.

9.3 The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, who will add to the

person's records details of the searches and these will be seen by other organisations that make searches.

9.4 In the event that the Company is unable to obtain relevant finance on the terms originally proposed then the Company shall return the deposit received from the Customer for the relevant Equipment and shall have no further liability to the Customer.

9.5 If indemnities are required by a relevant finance provider, failure to provide such indemnities shall constitute a breach of these Conditions by the Customer and shall entitle the Company to terminate this Contract and retain any deposit paid by the Customer.

9.6 After Delivery and Installation (where applicable) of the Equipment is completed any failure by the Customer to complete any relevant finance agreement documentation shall render the Customer liable to pay to the Company the whole of the Price as defined in condition 10.1.1 within seven days of presentation of an invoice.

## **10. PRICE AND CHARGES**

### **10.1 EQUIPMENT**

10.1.1 The Price is as stated on the Order Form. Any invoices issued by the Company in respect of the Price shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.1.2 Unless otherwise specified the Price is based on the assumption that the Delivery of the Equipment and (where applicable) Installation Services will be completed in one visit to the Site and accordingly the Company may at its discretion at any time increase the Price to take account of any additional costs to the Company (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

### **10.2 DATA NETWORK SERVICES**

10.2.1 The Charges will be as detailed in the Tariff or unless, and as, stated on the Order Form.

10.2.2 The Company shall have the right to alter the Charges from time to time by publishing changes to the Tariff at [www.daisygroup.com](http://www.daisygroup.com) (or at such other URL as is notified to the Customer by the Company from time to time):

(a) at least thirty days prior to the change taking effect in the event of changes which may be of material detriment to the Customer; and

(b) as soon as is reasonably practical in the circumstances prior to the change taking effect, for all other changes,

and if the Customer wishes to object to any proposed change which is of material detriment to the Customer, then the Customer must notify the Company in writing (addressed to Customer Services, Daisy Communications Limited, Daisy House, Lindred Road Business Park, Nelson, BB9 5SR) within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the publishing by the Company of any change in accordance with condition 10.2.2(a) shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

10.2.3 Usage charges payable shall be calculated by reference to data recorded or logged by the Company and not by reference to any data recorded or logged by the Customer.

Any invoices issued by the Company in respect of the Charges for Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.2.4 Subscription Charges are payable from the Commencement Date.

10.2.5 The Company will increase the Subscription Charges in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### **10.3 MAINTENANCE SERVICES**

10.3.1 The Customer shall pay to the Company the Annual Support Charge in accordance with condition 11.3. Any invoices issued by the Company in respect of the Charges for Maintenance Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.3.2 The Company shall have the right to alter the Annual Support Charge from time to time by giving the Customer not less than fourteen days' notice.

10.3.3 Notwithstanding condition 10.3.2, the Company shall increase the Annual Support Charge in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### **10.4 HOSTING SERVICES**

10.4.1 The Customer shall pay to the Company the Annual Hosting Charge in accordance with condition 11.4. Any invoices issued by the Company in respect of the Annual Hosting Charge shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.4.2 The Company shall have the right to alter the Annual Hosting Charge from time to time by giving the Customer not less than fourteen days' notice.

10.4.3 Notwithstanding condition 10.4.2, the Company shall increase the Annual Hosting Charge in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### **10.5 CO-LOCATION SERVICES**

10.5.1 The Customer shall pay to the Company the Co-Location Charges in accordance with condition 11.5.1. Any invoices issued by the Company in respect of the Charges for Co-Location Services shall, save in the case of manifest error, be final, conclusive and binding on the Customer.

10.5.2 The Company shall have the right to alter the Co-Location Charges from time to time by giving the Customer not less than fourteen days' notice.

10.5.3 Notwithstanding condition 10.5.2, the Company shall increase the Co-Location Charges in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.

### **10.6 VALUE ADDED TAX**

All sums referred to under these Conditions, the Order Form, any Promotional Terms and any Service Specific Conditions are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable at the rates ruling at the date of the relevant invoice.

## **11. INVOICING AND PAYMENT**

### **11.1 EQUIPMENT**

11.1.1 Unless otherwise stated on the Order Form, a deposit equal to at least one half of the Price is payable by the Customer at the time of the placing of the relevant order and the balance of the Price as defined in condition 10.1.1 is payable immediately upon Delivery (subject to condition 4.1.5). Any delay by the Company in invoicing the Price shall not relieve the Customer of its liability to pay for the same.

### **11.2 DATA NETWORK SERVICES**

11.2.1 Subject to condition 11.2.2, the Customer shall be invoiced monthly in arrears for usage by the Company and shall pay the Charges by direct debit within ten days of the date of the invoice (unless otherwise expressly agreed with the Company and set out on the Order Form).

11.2.2 Subscription Charges are payable quarterly in advance, unless expressly agreed in writing by the Company.

11.2.3 Any omission or delay by the Company in invoicing the Charges for Data Network Services shall not the Customer of its liability to pay the same.

### **11.3 MAINTENANCE SERVICES**

11.3.1 Unless otherwise stated on the Order Form, the Customer will pay the Annual Support Charge to the Company by Direct Debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

11.3.2 Where the Company has agreed to raise an Annual Support Charge annually, the Customer will pay the charge in advance of the Commencement Date and annually thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Annual Support Charge and/or Additional Charges shall not relieve the Customer of its liability to pay for the same.

### **11.4 HOSTING SERVICES**

11.4.1 Unless otherwise stated on the Order Form, the Customer will pay the Annual Hosting Charge to the Company by Direct Debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

11.4.2 Where the Company has agreed to raise an Annual Hosting Charge annually, the Customer will pay the charge in advance of the Commencement Date and annually

thereafter upon each anniversary of that date. Any delay by the Company in invoicing the Annual Hosting Charge and/or Additional Charges shall not relieve the Customer of its liability to pay for the same.

#### 11.5 CO-LOCATION SERVICES

11.5.1 Unless otherwise stated on the Order Form, the Customer will pay the Co-Location Charges to the Company by direct debit (to such account as the Company may designate for that purpose) in advance of the relevant period as set out on the Order Form.

Any delay by the Company in invoicing the Co-Location Charges shall not relieve the Customer of its liability to pay the same.

11.6 If payment of any sum payable to the Company is not made on or before the due date, the Company shall be entitled to charge interest thereafter on such sum at either the rate of four per cent per annum above the current base rate of The Royal Bank of Scotland plc from time to time or, if higher, such rate as the Company would be entitled to claim under the Late Payment of Commercial Debts (Interest) Act 1998 (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) from the due date until the date of payment whether before or after judgment.

11.7 Unless e-billing is expressly not required on the Order Form, invoices will be made available for download by the Customer and the Customer will be notified at the e-mail address set out on the Order Form that the invoice is ready for downloading. Where e-billing is expressly not required on the Order Form, the invoice may be sent to the registered address of the Customer (or the address of the Customer) at an additional cost to the Customer as set out in the Tariff.

11.8 If the Company is unable, for whatever reason, to recover any sum due under the Customer's account within four days following the due date for payment, the Company reserves the right to forthwith suspend all or any of the Services.

11.9 If the Customer's account remains unpaid (in any part) the Company may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before the Company will reinstate the Service.

11.10 If the Customer's account remains unpaid (in any part) for a period of thirty days after the original due date for payment, the Services may then be terminated by the Company.

11.11 Without prejudice to the Company's other remedies, if the Customer's account remains outstanding for any reason after the original due date for payment, then:

11.11.1 the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount. The Company may also charge the Customer a fee where it suspends a Service for non-payment; and

11.11.2 the Company reserves the right to refer the outstanding account to a debt collection agency. If the Company instructs a debt collection agency to collect payment (including interest and late payment charges) on its behalf the Customer must pay the Company's costs payable to the agency, who will add the sum to the Customer's outstanding debt.

11.12 The Customer will ensure that the name of the account holder is the same as the name on the payment details provided.

11.13 If the Customer cancels an active direct debit instruction following the Effective Date, an additional administration fee of £4.95 (or such other amount as may be notified to the Customer by the Company from time to time) will be added to the monthly invoice until the direct debit instruction is reinstated. The Company also reserves the right to charge the Customer a Direct Debit cancellation fee at the Company's then applicable rate.

11.14 The Company may, without notice, withhold any payments due to the Customer under the Contract or any other agreement between the Company or any other member of its Group and the Customer if:

11.14.1 the Company has reason to believe the Customer is in breach of the Contract; and/or

11.14.2 the Customer is (or the Company reasonably believes that the Customer is) conducting its business or using a Service illegally or unlawfully (including without limitation in breach of any OFCOM requirements) or for an illegal or unlawful purpose; and/or

11.14.3 the Contract is terminated for any other reason; and/or

11.14.4 the Company has reason to believe the Customer is insolvent or is likely to become insolvent.

11.15 If any sum owed by the Customer to the Company under the Contract or any other contract with the Company is not paid by the due date, the Company may deduct this sum

from any payment or credit due to the Customer under the Contract or any other contract with the Company or any member of the Company's Group.

11.16 Payment of all sums due to the Company shall be made without any set-off whatsoever.

11.17 If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within fourteen days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:

11.17.1 less than five per cent of the total charges listed on the invoice, the Customer shall pay the full amount of the invoice; or

11.17.2 more than five per cent of the total charges listed on the invoice, the Customer shall pay the remaining amount of the invoice that is not in dispute.

#### 12. SITES

12.1 To enable the Company to fulfil its obligations under any Contract:

12.1.1 the Customer shall permit or procure permission for the Company, its agents, employees and representatives and any other person(s) authorised by the Company to have reasonable access to the Site, Equipment and any other relevant system and other equipment and shall provide such reasonable assistance as the Company requests. If the Company is refused access or prevented from accessing the Site, for whatever reason, it will be relieved from all of its performance obligations under this Contract and shall have no liability to the Customer and the Customer shall hold the Company harmless in this regard.

12.1.2 The Company will normally carry out Installation Services and/or Maintenance Services by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, it shall be liable to the Company for any costs and expenses which the Company incurs as a result of such cancellation, rescheduling and/or missed appointment.

12.2 At the Customer's request, the Company may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay the Company's reasonable charges for complying with such a request.

12.3 The Customer warrants, represents and undertakes that there are adequate health and safety provisions in place at the Sites, and that the Customer holds third party public liability insurance with a level of cover of at least the minimum required by law.

12.4 The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of Equipment and for the provision, use and operation of the Equipment and/or Services at the Sites (save to the extent the Company has agreed in writing to do it). The Customer shall provide copies of such consents, licences and permissions to the Company upon request.

12.5 In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days from the Commencement Date the Company will be able to terminate the Contract forthwith by giving the Customer written notice without any liability. If the Customer has not managed to procure the necessary consents and the Company has commenced work the Company may ask the Customer shall, on request by the Company, refund to the Company the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.

12.6 The Customer shall provide the Company with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide the Company with full details of all other services in the vicinity of the proposed works.

12.7 The Customer is responsible for making the Site good after any work undertaken by the Company at a Site, including without limitation replacing and re-siting items and for re-decorating.

12.8 The Customer shall provide sufficient rack space for housing any equipment related to the Data Network Services together with an adequate power supply.

12.9 The Customer shall ensure any equipment related to the Data Network Services is housed in a locked, well ventilated cabinet with sufficient environmental control to maintain both heat and moisture within tolerable limits.

12.10 The Customer shall ensure that the power supplied to the Equipment and any other related equipment is protected to maintain supply and prevent spikes and losses, without which the Data Network Services shall not be available.

12.11 The Customer warrants, represents and undertakes that:

(a) it has the right to grant (and shall grant) access and permission to the Company and its Carriers to install physical infrastructure at the Sites;

(b) the Sites at which it is intended to provide Services are not 'listed buildings' nor do they have any other limitations or restriction which may impact the installation of physical infrastructure.

12.12 The Customer must identify asbestos contaminated areas at the Site prior to implementation and commencement of the works. In the event that the Company discovers asbestos contaminated areas at the Site then it will cease work until the asbestos is removed or the area is made safe for the works to resume. The Company shall have no liability for any delay which is as a result of asbestos contamination and the Customer shall hold the Company harmless in this regard. The Customer shall be responsible for the removal of all asbestos at the Site including the co-ordination of and all costs incurred in connection with the engagement by the Customer of a company which specialises in the installation of cables in asbestos contaminated areas.

12.13 The Customer acknowledges and agrees that once the Contract is in effect in accordance with condition 2.1, it shall not (save without the prior written consent of the Company) be able to change the address of the Site at which the Data Network Services are to be provided. Further the Customer acknowledges and agrees that any change to the Site pursuant to this condition 12.13 will result in additional charges to be paid by the Customer.

### **13. LIMITATION OF LIABILITY**

13.1 Unless otherwise stated in this Contract, the Company makes no representation or warranty in respect of the supply of Equipment and/or Services and all other terms, conditions and warranties which may otherwise be implied into this Contract by law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.

13.2 Subject to condition 13.5, in no circumstances shall the Company's liability to the Customer arising under or in connection with this Contract (whether in contract, tort (including without limitation negligence) misrepresentation, breach of statutory duty or otherwise) in any Contract Year exceed 110% of the Price and/or Charges paid in the twelve months prior to the date on which a claim arose in respect of the Equipment, Data Network Services, Installation Services, Maintenance Services, Hosting Services, or Co-Location Services to which the claim relates.

13.3 Subject to condition 13.5, under no circumstances shall the Company be liable in any event under or in connection with the Contract and whether in contract, tort (including negligence) misrepresentation, breach of statutory duty or otherwise for any:

13.3.1 loss of revenue;

13.3.2 loss of business;

13.3.3 loss of contracts;

13.3.4 loss of, damage to, or corruption of data (save where expressly stated otherwise in these conditions);

13.3.5 loss of anticipated savings;

13.3.6 loss of profits; or

13.3.7 indirect, consequential or special losses;

whether or not the Company knew or ought to have known that such losses or damages might be incurred.

13.4 Neither party shall be liable to the other party for any breach of any provision of the Contract (whether in breach of contract, tort (including but not limited to negligence) misrepresentation, breach of statutory duty or otherwise) caused by any reason outside the reasonable control or responsibility of that party including, without limitation, ((in respect of Data Network Services supplied by the Company, the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to the Company on which it was reliant for the purposes of the Contract), any act of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood,

drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.

13.5 Nothing in these Conditions excludes or restricts either party's liability for:

13.5.1 death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);

13.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;

13.5.3 any indemnity given under the Contract; and/or

13.5.4 anything for which the parties cannot at law limit or exclude their liability.

13.6 Subject to condition 13.5, the Customer agrees that any cause of action that it may have against the Company and/or any of its Group members (including, its (or their) affiliates, directors, officers, agents, consultants and employees) must commence within two (2) years after the cause of action arose, otherwise, the Customer's cause of action is permanently barred.

### **14. CUSTOMER'S INDEMNITY**

14.1 Without prejudice to any other rights of the Company, the Customer shall indemnify, keep indemnified and hold harmless the Company against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any:

a) breach by the Customer of any warranties, undertakings and/or representations given under the Contract and/or any failure to comply with any obligations, responsibilities and/or liabilities of the Customer set out in the Contract; and/or

b) injury and/or damage suffered or incurred by or to any of the Company's (or any of the Company's contractors') employees and/or equipment whilst on a Site.

### **15. SUSPENSION, TERMINATION AND CONSEQUENCES**

#### **15.1 SUSPENSION OF SERVICES**

15.1.1 Without prejudice to any other right of the Company to suspend or terminate the Services under these Conditions, the Company may at its sole discretion elect to suspend forthwith provision of any Services until further notice without liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:

(a) the Customer is in breach of a term of these Conditions and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company on the due date or to comply with the Broadband Acceptable Use Policy;

(b) the Company is obliged to, in order to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM);

(c) the Company has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party;

(d) any licence under which the Customer has the right to use the Services (or disclose data to the Company) is revoked, amended or otherwise ceases to be valid;

(e) the Company or any member of its Group is entitled to suspend and/or terminate provision of any other telecommunications service under the terms of any other agreement with the Customer; or

(f) any maintenance or repair is necessary or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, the Company shall not be required to give any advance notice)

15.1.2 The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to condition 15.1.1 and/or the recommencement of the provision of the Services as appropriate, save in the case of a suspension, pursuant to condition 15.1.1(b).

15.1.3 The Customer shall not have access to any data stored through the Hosting Services during a suspension. The Customer shall have the opportunity to create a snapshot backup of the data stored through the Hosting Services, and the Customer shall pay the Company the applicable charges for undertaking such a backup, in accordance with the Company's then current charges.

15.1.4 Without prejudice to any other right of termination under these Conditions, the Company may terminate (in whole or in part) the Contract forthwith in the event that its right, or the right of the relevant Carrier, to provide any of the is withdrawn by any supplier to it or OFCOM pursuant to the General Conditions or otherwise.

#### 15.2 TERMINATION OF SERVICES

15.2.1 Subject to conditions 15.2.4, 15.2.5 and 15.2.6 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an order has been accepted by the Company) to change or cancel an order.

15.2.2 Subject to condition 15.2.6, in the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify the Company in full against all loss (including, but not limited to, all losses incurred by the Company as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Term before the end of the relevant notice period, which will include a minimum payment to the Company of the amount of the outstanding Charges or other amounts that would have been paid by the Customer had the Contract continued for the Minimum Term and/or the relevant notice period (as the case may be)), costs, damages, charges (including, but not limited to, any liability for Services transferred from third parties) and administration charges (of a minimum of £300 in respect of the termination of the supply of any or all of the Equipment which is the subject of a Contract) and expenses incurred by the Company as a result of such changes or cancellation.

15.2.3 Without prejudice to any other rights of the Company under these Conditions or otherwise, the Company shall be entitled at any time and for any reason whatsoever to terminate this Contract for Services on the giving of not less than thirty days' written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 15.2, the Customer's liability to pay the Charges for Services shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.

15.2.4 A Contract may be terminated forthwith by either party by notice in writing if the other party materially breaches its obligations under this Contract (including without limitation non-payment of charges due) and in the case of breaches which are capable of remedy such party fails to remedy such breach within fourteen days of written notice by the other party of what the breach is and requesting that the breach is remedied. The Company shall also be permitted to terminate this Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract to which these conditions apply (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen days of written notice by the Company of what the breach is and requesting that the breach is remedied.

15.2.5 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate all Contracts forthwith in the event that the other party becomes unable to pay its debts as they fall due (as defined in s123 of the Insolvency Act 1986), a liquidator (other than for the purpose of solvent amalgamation or reconstruction) trustee in bankruptcy, administrator or receiver is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator or to make a winding up order (save as in respect of a solvent reconstruction of such relevant party's group of companies).

15.2.6 Where the Customer is a Small Business Customer, the Customer may cancel the provision of Data Network Services at any time prior to the commencement of the provision of the Data Network Services, without any form of charge or compensation being required to be paid to the Company.

15.2.7 The Company shall be entitled to terminate the Contract forthwith in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 15.1.

#### 15.3 CONSEQUENCES OF TERMINATION

15.3.1 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of this

Contract which expressly or by implication is intended to survive, shall survive the termination or expiry of the Contract.

15.3.2 Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.

15.3.3 For the avoidance of doubt, in the event of termination of the Contract for any reason, the Customer shall not be entitled to a refund of any pre-paid sums (including, without limit, subscription, rental and/or maintenance charges) whether such sums are attributable to the period before, including or after the date the Contract terminates.

#### 16. SOFTWARE, THE PORTAL AND THIRD PARTY LICENCES

16.1 Where the Company provides software to the Customer to enable the Customer to use the Services ("**Software**"), the Company will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Contract (and to the extent necessary to use the relevant Services). If required by the Company, the Customer shall sign such end user licence agreement as may be reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software and for the Customer to be able to use the Software.

16.2 Except as permitted by applicable law or as expressly permitted under the Contract the Customer shall not de-compile, reverse-engineer, or modify the Software, or copy the relevant manuals or documentation.

16.3 The Customer shall, and shall procure that all end users shall, comply with all Software licence terms and conditions which apply to the use of the Software, whether such terms and conditions are embedded in the Software in a click through form or otherwise.

16.4 The Customer shall not transfer or use Software other than for the Services.

16.5 To the fullest extent permitted by law, all terms, conditions and warranties (whether implied by law or otherwise) in relation to the condition or performance of Software are excluded.

16.6 During the Minimum Term and any Rollover Periods, the Company shall grant the Customer a revocable, personal and non-exclusive licence to use the Portal in order for the Customer to manage its requirements for the Services.

16.7 The Company provides no guarantees regarding the timescales within which the Customer's requests for Equipment and/or Services or changes to Equipment and/or Services will be processed through the Portal.

16.8 The Company provides no guarantees or warranties that use of the Portal shall be uninterrupted or error free, and (subject to condition 13.5) hereby disclaims any and all liability to the Customer in respect of the Customer's or any of its' users' inability to access the Portal or any part thereof.

16.9 The Customer shall have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Portal in whole or in part.

16.10 The Customer shall ensure that the number of persons using the Portal does not exceed the number of Portal licences purchased from the Company.

16.11 The Customer shall notify the Company as soon as it becomes aware of any unauthorised use of the Portal by any person.

16.12 The Customer is responsible for maintaining licences and adhering to the licence terms of any software it uses or runs using the Services.

16.13 Without prejudice to the generality of condition 16.3, as part of the Services, the Customer may be allowed to use certain software (including related documentation) developed and owned by Microsoft Corporation or its licensors (collectively, the "**Microsoft Software**"). If the Customer chooses to use the Microsoft Software, Microsoft Corporation and its licensors require that it agrees to these additional terms and conditions:

16.13.1 the Microsoft Software is neither sold nor distributed to the Customer and the Customer shall use it solely as part of the Services;

16.13.2 the Customer shall not transfer or use the Microsoft Software outside the Services;

16.13.3 the Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on the Microsoft Software;

16.13.4 the Customer shall not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.

16.13.5 The Customer acknowledges and agrees that like the Company, Microsoft Corporation disclaims, to the extent permitted by applicable law, all warranties by Microsoft

Corporation and any liability by Microsoft Corporation or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services and/or the provision of the Microsoft Software.

16.13.6 The Customer acknowledges and agrees that Microsoft Corporation is not responsible for providing any support in connection with the Services and/or the Microsoft Software. The Customer shall not contact Microsoft Corporation for such support.

16.13.7 The Customer is not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, "**High Risk Use**"). Microsoft Corporation and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilisation of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

16.14 Without prejudice to the generality of condition 16.3, as part of the Services, the Customer may be allowed to use certain software (including related support, maintenance, and documentation) developed, owned or provided by Red Hat, Inc. or its licensors (collectively, the "**Red Hat Software**"). If the Customer chooses to use the Red Hat Software, Red Hat, Inc. and its licensors require that the Customer agrees to these additional terms and conditions:

16.14.1 Red Hat, Inc. disclaims any (i) warranties with respect to the Red Hat Software and (ii) liability for any damages, whether direct, indirect, incidental, special, punitive or consequential, and any loss of profits, revenue, data or data use, arising from the Customer's use of the Red Hat Software;

16.14.2 The Customer's use of the Red Hat Software is subject to the terms and conditions of the Red Hat Cloud Software Subscription Agreement currently located at [www.redhat.com/licenses/cloud\\_cssa/](http://www.redhat.com/licenses/cloud_cssa/) (the "**Red Hat CSSA**"). By using the Red Hat Software, the Customer hereby agree to be bound by the terms of the Red Hat CSSA.

#### **17. CALL MONITORING**

The Company may monitor and record calls made to or by the Company by or to the Customer (and/or any of their employees or personnel), for training purposes, to improve the quality of its customer services and to assist with complaint handling. The Customer undertakes to make its employees and personnel aware of the rights reserved by the Company under this condition.

#### **18. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION AND DATA FAIR PROCESSING NOTICE**

18.1 The Company and the Customer will take reasonable steps to keep in confidence any information of the other; whether written or oral, of a confidential nature obtained under or in connection with the Contract except to the extent any disclosure is required by law. The Customer and the Company will not, without the consent of the other, disclose such information to any person other than:

18.1.1 their employees, contractors or professional advisers who shall require the information in order for the Customer or the Company to fulfil its obligations under the Contract; or

18.1.2 in the case of the Customer, its users to the extent that they are required to use or access the Service.

18.2 Information shall not be treated as confidential if it is:

18.2.1 lawfully in the public domain; or

18.2.2 lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or

18.2.3 obtained from a third person who is entitled to disclose it; or

18.2.4 replicated independently by someone without access or knowledge of the information.

18.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by the Company in connection with the Contract the Customer will notify the Company immediately of the request and give

the Company at least ten Business Days to make representations before releasing the requested information (save to the extent otherwise required by law).

18.4 The Customer acknowledges and agrees that the Company may use Personal Data and/or confidential information obtained from the Customer during or following the completion of the Order Form or as a result of the Customer's use of the Equipment or Services and/or arising from or out of the provision of the Equipment or Services, for the following purposes:

18.4.1 administering the Customer's account (including, without limitation, arranging finance with lessors of the Equipment, liaising with any Carriers who are relevant to the provision of the Data Network Services, and sharing the data with members of the Company's Group);

18.4.2 notifying the Customer of changes to the Service, including (without limitation and unless stated otherwise on the Order Form) contacting the Customer regarding potential and/or actual enhancements to or offers in relation to the Service;

18.4.3 enabling the Company to supply the Services and Equipment to the Customer; and

18.4.4 for invoicing purposes.

18.5 The Company will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about the Company's (or any member of its Group's) own products and services which it considers may be of interest to the Customer, unless the Customer specifically requests on the Order Form that the Company does not do so.

18.6 If the Customer wishes to have details of the credit reference or the fraud prevention agencies the Company uses to obtain information about the Customer, or receive a copy of the information the Company holds about them, it may do so by submitting a request in writing for a copy of the information to the Company's Data Controller at Daisy House, Lindred Road Business Park, Nelson, Lancashire, BB9 5SR, stating the Customer's full name, address, account number and phone number. The Company may charge a reasonable administration fee for providing such information.

18.7 The Customer warrants, undertakes and agrees that it will grant or procure from its employees and other personnel such consents to the use of Personal Data (referred to above) as may be necessary to enable the Company to use such data for the purposes described in this condition 18.

18.8 Where a party who has disclosed confidential information so requests and at the end of the Minimum Term or following termination of the Contract for whatever reason, each party who has received any confidential information of the other party shall, subject to condition 18.9 without delay:

18.8.1 return to the other party, in a form capable of delivery, anything containing or recording the confidential information, whether in the form of documents, computer records, audio tapes, video tapes, CD Roms or any other media; and

18.8.2 certify in writing that any such confidential information not returned has been destroyed or made permanently unusable;

18.9 Save where continuing use or disclosure of such confidential information is necessary in order for the Company or any member of the Company's Group to exercise its rights or perform Services under the Contract or where the other party is required to maintain such confidential information pursuant to any Relevant Laws.

#### **19. CHANGES TO THE CONDITIONS, SERVICE SPECIFIC CONDITIONS AND CONTRACT**

19.1 The Company may change the Conditions and/or Service Specific Conditions at any time and will publish any change in line with condition 19.2.

19.2 The Company will publish any changes to the Conditions and/or Service Specific Conditions online at [www.daisygroup.com](http://www.daisygroup.com) (or at such other URL as is notified to the Customer by the Company from time to time):

19.2.1 at least thirty days before the change is to take effect for changes that may be of material detriment to the Customer; and

19.2.2 as soon as is reasonably practical in the circumstances prior to the changes taking effect, for all other changes.

19.3 If the Customer wishes to object to any proposed change which is of material detriment to the Customer, the Customer must notify the Company in writing (addressed to Customer Services, Daisy Communications Limited, Daisy House, Lindred Road Business Park,



Nelson, BB9 5SR) within thirty days of publication of the proposed change, otherwise the Customer will be deemed to have accepted the proposed change. For the avoidance of doubt, the service by the Company of any notice in accordance with condition 19.2 shall not constitute either acceptance of or an admission by the Company that any proposed change is of material detriment to the Customer, nor shall the service of notice by the Customer under this condition 19.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

19.4 The Company may, if requested by the Customer, provide additional services to be included within the Services under such additional terms and conditions as may be notified by the Company from time to time.

19.5 Subject to condition 19.1, no variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initialled by both parties, manuscript amendments to the type face, as such details may be inputted by authorised staff of the Company) will be accepted by the Company unless authorised by notice in writing by a Director of the Company.

## **20. FRAUD AND SECURITY**

20.1 The Customer shall ensure that user names, passwords and encryption keys used by it and/or its personnel and/or users in connection with the Services, Portal and/or Equipment are kept secure and confidential at all times and are only used by authorised users. The Customer shall inform the Company immediately if the Customer knows or suspects that a user name, password or encryption key has been disclosed to an unauthorised user or is being used in an unauthorised way, or if there is any illegal, fraudulent or unauthorised use of the Services, Portal or Equipment.

20.2 The Company reserves the right (at the Company's sole discretion):

20.2.1 to suspend access to the Services and/or the Portal through any or all user names, passwords and/or encryption keys, if at any time the Company thinks that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under this condition 20); and

20.2.2 to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer's uses in connection with the Services.

20.3 The Customer will inform the Company immediately of any subsequent changes to the information the Customer supplies to the Company in connection with the Contract.

20.4 The Customer accepts and acknowledges that neither the Services or the Portal are guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services or the Portal.

20.5 The Customer acknowledges that the Company has no control of a Customer's equipment configuration, voice mail security or other feature services enabled.

20.6 The Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment and/or Services and/or the Portal or any use of the Equipment and/or Services and/or the Portal by any unauthorised third parties (who are not employees of the Company) and the Customer agrees to pay all additional charges related to such fraudulent and/or use by unauthorised third parties. The Customer is therefore urged to verify with their equipment provider that all necessary steps to combat fraudulent and/or unauthorised use have been taken.

20.7 Any assistance given by the Company in relation to fraudulent and/or authorised use by the Customer or third parties (or the prevention of such use) will be on an endeavours basis only and no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond the Company's reasonable control (save for any fraud and/or authorised use by an employee of the Company acting in that capacity).

20.8 The Customer shall, at all times, be responsible for:-

20.8.1 preventing unauthorised use of the Services;

20.8.2 maintaining the security of all systems, Services, network elements and Equipment within its (or its employees', agents' or contractors') control; and

20.8.3 maintaining (and ensuring that each of its authorised users maintains) at all times, the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, network elements or Equipment.

20.9 Without limiting this condition 20.9, the Customer shall put in place and comply at all times with the following security measures:-

20.9.1 the Customer shall ensure that the password used in connection with the Equipment and Services is strong and is made up of not less than eight characters which shall include at least one number, one letter and one alphanumerical symbol;

20.9.2 the Customer shall regularly and at least every 6 (six) weeks change the password set out at 20.9.1 above;

20.9.3 the Customer shall restrict access to passwords to key individuals;

20.9.4 the Customer shall ensure that it has up to date anti-virus protections and that it has firewalls in place which are maintained by the Customer in accordance with best industry practices; and

20.9.5 the Customer shall, without delay, follow any security directions given to it by the Company from time to time.

20.10 The Customer shall ensure that when accessing any of its Hosted Data, it shall not access or attempt to access any other data held by the Company. If the Customer gains access to data other than the Hosted Data, it shall notify the Customer immediately.

## **21. ANTI-BRIBERY**

21.1 The Customer shall, and shall procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with a Contract shall;

21.1.1 comply with all applicable Anti-Bribery Laws;

21.1.2 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;

21.1.3 comply with the Company's Ethics and Anti-bribery Policy (available at [www.daisygroup.com/why-daisy/compliance/](http://www.daisygroup.com/why-daisy/compliance/) or at such other URL as is notified to the Customer by the Company from time to time) as the Company may update them from time to time ("**Relevant Policies**");

21.1.4 have and shall maintain in place throughout the term of all Contracts its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Anti-Bribery Laws and the Relevant Policies, and will enforce them where appropriate;

21.1.5 not do or omit to do any act or thing which constitutes or may constitute an offence under Anti-Bribery Laws;

21.1.6 not do or omit to do any act or thing which causes or may cause the Company and/or its Group to be in breach of and/or commit an offence under any Anti-Bribery Laws;

21.1.7 without prejudice to condition 21.1.6, not do or omit to do any act or thing which causes or may cause the Company or any member of the Company's Group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if the Company was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and

21.1.8 provide the Company and any member of the Company Group (at the Customer's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

21.2 The Customer shall:

21.2.1 promptly report to the Company and any member of the Company's Group any request or demand for any financial or other advantage of any kind received in connection with the performance of the Contract by it or by its officers, employees, agents or any other person who performs the services for or on behalf of it in connection with the Contract; and

21.2.2 upon request, certify in writing signed by a director of the Customer that the Customer has complied with all of its obligations under this condition 21. The Customer shall provide such supporting evidence of compliance as Company or any member of the Company's Group may reasonably request.

21.3 The Customer warrants to the Company and all members of the Company's Group that it has not, and its officers, employees, agents and any other persons who perform the services for or on behalf of it in connection with the Contract have not breached any applicable Anti-Bribery Laws; been convicted of any offence involving bribery, corruption, fraud or dishonesty; offered, promised, given, requested, agreed to receive, received or accepted a bribe or financial or other advantage or committed any corrupt act; done or

omitted to do any act or thing which constitutes or may constitute an offence under the Anti-Bribery Laws; done or omitted to do any act or thing which caused or may cause any person to be in breach of and/or commit an offence under any Anti-Bribery Law; done or omitted to do any act or thing which caused or may cause any person to be guilty of an offence under section 7 of the Bribery Act; or given any financial or other advantage, inducement or reward to any person in connection with the awarding or continuation in force of this Contract.

21.4 The Company and/or any member of the Company's Group may terminate the Contract immediately if the Customer is in breach of any of its obligations under this condition 21 or if the Company or any member of the Company's Group has reasonable cause to believe that such a breach has occurred or may occur. If the Company or any member of the Company's Group terminates the Contract in accordance with this condition 21.4, the Customer shall not be entitled to claim any compensation or any further remuneration from the Company or any member of the Company's Group.

## **22. INTELLECTUAL PROPERTY RIGHTS**

22.1 Any Intellectual Property Rights supplied by the Company or any member of the Company Group to the Customer, or specifically produced by the Company for the Customer or any member of the Customer Group, in connection with this Contract, shall be the exclusive property of the Company and/or the relevant member of the Company Group and/or relevant licensor and to the extent that any such rights vest in the Customer shall be deemed to be and shall be assigned to the Company or the relevant member of the Company Group by the Customer. The Customer shall not disclose to any third party or use any such Intellectual Property Rights except to the extent that it is or becomes public knowledge through no fault of the Customer, or as required for the performance of the Customer's obligations under this Contract. Any Intellectual Property Rights belonging to, licensed to or supplied by the Company or any member of the Company Group to the Customer shall be used by the Customer only as expressly permitted under the terms of the Contract and in accordance with the instructions of the Company or any member of the Company's Group.

22.2 Any licence provided by the Company to the Customer in relation to the Intellectual Property Rights shall be personal to the Customer, non-exclusive, revocable and limited to the United Kingdom and in the absence of earlier revocation shall terminate upon termination of this Contract.

22.3 By using the Services (in particular, but without limitation, the Hosting Services) the Customer shall provide the Company with information and data, title to which shall remain vested in the Customer (or its licensors). The Customer warrants that it has all necessary rights and licences to use and transmit over the internet to the Customer all information and data which will be subject to the Hosting Services and hereby grants the Company a non-exclusive licence to use such information and data for the purposes of performing the Services.

## **23. GENERAL**

23.1 Any time period stated in respect of the Company's obligations in connection with the Services and/pr Equipment is not guaranteed nor of the essence of the Contract (nor capable of being deemed to be of the essence of the Contract).

23.2 Subject to any deemed acceptance by the Customer under condition 4.1.3 and/or condition 19.3, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these Conditions and/or any Service Specific Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be regarded as a waiver of any of these Conditions and/or any Service Specific Conditions.

23.2 The Contract (and any non-contractual matters arising out of or in connection with it) shall be governed by and construed in all respects in accordance with English law and the Customer hereby submits for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts (including in relation to non-contractual disputes).

23.3 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and no third party shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

23.4 Any notice, invoice or other document which may be given by either party under the Contract shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the address or fax number, given on the Order Form (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this condition 23.4 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted. E-mail shall not be a valid method of serving notices under this Contract.

23.5 Any director or representative of the Customer who signs on behalf of the Customer will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Customer to the obligations in this Contract in all respects.

23.6 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.7 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the consent of the Customer however, the Customer shall, if the Company requires, execute such deeds and/or documents as may be necessary or required by the Company to give effect to any such dealing in such rights and/or obligations.

23.8 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

23.9 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract, actively solicit or entice away from the Company, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement by the Customer for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services to the Customer. Any consent given by the Company in accordance with this condition 23.9 shall be subject to the Customer paying to the Company a sum equivalent to twenty per cent of the then current annual remuneration of the Company's employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

23.10 The Company and the Customer agree that the Employment Regulations are not likely to apply to transfer the employment or engagement of any Employee to the Company in connection with the Contract or the termination or expiry of all or part of any contract between the Customer and a Contractor or any other provision of the Services.

23.11 The Customer agrees to indemnify and keep indemnified the Company against all liabilities, losses, actions, proceedings, damages, costs (including legal and employment costs), claims, demands and expenses brought or made against or suffered or incurred by the Company arising out of or connected with:

23.11.1 the transfer or alleged transfer of the employment or engagement of any Employee to the Company pursuant to the Employment Regulations or otherwise; and

23.11.2 the employment or engagement or termination of employment or engagement by the Customer or a Contractor and/ or any Subcontractor of any Employee.

23.12 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

23.13 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, that provision will apply with whatever minimum modification is necessary to make it valid, enforceable and legal whilst still giving effect to the commercial intention of the parties.

23.14 Save where the context otherwise requires, in these Conditions a reference to a "person" shall include a company, body corporate, unincorporated association, state,

governmental or statutory body or authority, and/or a partnership, as well as a natural person (as appropriate).

23.15 Except with the prior written consent of the other party, neither party shall:

23.15.1 make any public statement about the Equipment and/or Services or otherwise publicise the Contract or any information relating to it; or

23.15.2 use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.

23.16 Nothing in the Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as the agent or employee of any other party. No party shall hold out any other party as its partner or joint venturer. Except, and to the extent, that the Contract expressly states otherwise, no party may incur any expenses or negotiate on behalf of any other party or commit any other party in any way to any person without that other party's prior written consent.

23.17 Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of the Contract.

23.18 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Neither party has entered into the Contract in reliance upon and nor shall they have any remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract. Nothing in this condition 23.18 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

23.19 The Contract may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.