



# Daisy Terms & Conditions for Supply Chain – July 2016

## 1. DEFINITIONS

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

“**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;

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

“**Company**” means Daisy IT Managed Services Limited a company registered in England and Wales with company registration number 183540 whose registered office is Daisy House, Lindred Road, Business Park, Nelson, Lancashire BB9 5SR;

“**Company Number**” means as defined within the definition of “**Number**” below;

“**Conditions**” shall mean this document;

“**Contract**” means the agreement between the Customer and the Company for the provision of the Equipment 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 of the Contract (and/or prior to the date of 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 the 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;

“**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 later of 1) date on which the Company signs the relevant Order Form and 2) all conditions precedent have been satisfied;

“**Emergency Call**” means a call to 999 or 112 or any other number associated with UK emergency services;

“**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;

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

“**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;

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

“**Order Form**” means the order form to which either these Conditions are attached or which is expressed to be subject to these Conditions 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;

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

“**Promotional Terms**” means any additional terms which apply to the Price 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 Installation Services, at the time the relevant Order Form was submitted;

“**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 for the time being, and/or (ii) stipulated by any regulatory authority to which a party is subject, in each case, for the time being;

“**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 (but excluding Promotional Terms);

“**Site**” means a place of business at which the Installation Services and/or Equipment are to be provided as specified on the Order Form;

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

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

## 2. CONTRACT FORMATION

2.1 The Order Form constitutes the Customer’s offer to the Company to purchase the relevant Equipment and/or Installation 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; and

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 the conditions in condition 4.1.1 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 15. 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, 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.

2.3.5 any other documents referred to on the Order Form or in these Conditions.

For the avoidance of any 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 and particulars of shade 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 Installation Services shall (for the purposes of this condition 2.5) be deemed (subject to condition 2.1) 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 Installation Services shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Equipment and/or Installation 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 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 the Installation 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 Installation 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 any 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.

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

#### **4.1 DELIVERY**

4.1.1 The conditions referred to in condition 2.1.3 are that:

4.1.1.1 the Company provides written confirmation to the Customer that the Equipment referred to on the Order Form as far as it is aware at the time of review is available and can be supplied in the stated timescales; and

4.1.1.2 the Company providing 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 the Customer's payment of the Price pursuant to condition 7.1 the Company will take reasonable steps to deliver the Equipment and, where applicable supply the Installation Services using reasonable skill and care, within an estimated period of time. Such period shall 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 (and may not be made) of the essence of the Contract.

4.1.3 Without prejudice to the generality of condition 3, 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.

4.1.4 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. 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.

4.1.5 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.

4.1.6 If by reason of refusal or delay of delivery or Installation, the Equipment shall be deemed to have been Delivered in accordance with condition 4.1.4 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 lines to the public telephone system lies with the Customer.

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 3 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 4.1.4) irrespective of whether title to the Equipment has passed or payment or part payment made. From the moment of Delivery or deemed Delivery (as described in condition 4.1.4) 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 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 will (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 subject to condition 4.4.3, 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 Delivery and/or after 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 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.

4.4.4 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.

4.4.5 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.

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

4.4.7 Subject to condition 9.5, 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. FINANCE AND CREDIT

5.1 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 creditworthiness 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.

5.2 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.

5.3 The Customer undertakes to supply all information requested by the selected finance provider(s) who will register searches with one or more credit agencies, which will be seen by other organisations that make searches.

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

5.5 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.

5.6 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 6.1.1 within seven days of the date of the Company's invoice.

#### 6. PRICE AND CHARGES

##### 6.1 EQUIPMENT AND INSTALLATION SERVICES

6.1.1 Save where, and to the extent that, any Promotional Terms apply, 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.

6.1.2 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.

##### 6.2 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 by the party paying the relevant sum at the rates in force at the date of the relevant invoice.

#### 7. INVOICING AND PAYMENT

##### 7.1 EQUIPMENT AND INSTALLATION SERVICES

7.1.1 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 6.1.1 is subject to any bona fide dispute in accordance with Condition 9.10, payable immediately upon Delivery (subject to condition 4.1.6). Any delay by the Company in invoicing the Price shall not shall not relieve the Customer of its liability to pay for the same.

7.2 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.

7.3 Unless e-billing is not expressly excluded 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 excluded 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.

7.4 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.

7.5 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:

7.5.1 the Customer will be charged an administration fee for each piece of correspondence in connection with the recovery of the overdue amount; and

7.5.2 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.

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

7.7 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:

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

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

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

7.8 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.

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

7.10 If the Customer acting in a bona fide manner intends to dispute any charge on an invoice, the Customer must first pay the undisputed amounts and communicate the

disputed amount in writing to the Company within seven days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge.

7.10.1 The parties shall meet as soon as reasonably practicable, and in any event, within 10 Business Days of the dispute being raised, in order to seek to settle the matter in dispute;

7.10.2. Where the dispute is settled in favour of the Company, the Customer shall pay the disputed part of the invoice immediately and interest shall be payable in accordance with condition 7.2.

7.10.3 Where the dispute is settled in favour of the Customer, the disputed amount shall not be payable by the Customer.

## **8. SITES**

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

8.1.1 the Customer shall permit or procure permission for the Company, its agents, employees, representatives and any other person(s) authorised by the Company to have reasonable access to the Site, Equipment and any other relevant telephone 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.

8.1.2 The Company will normally carry out work by appointment 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.

8.2 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.

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

8.4 The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, Installation Services and for the provision, use and operation of the Equipment 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.

8.5 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.

8.6 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.

8.7 If the new installation or moving Site involves the visit of an engineer to facilitate the new installation, the Customer will be responsible for the costs incurred by the Company for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by the Company to complete the transfer of the Equipment.

8.8 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.

## **9. LIMITATION OF LIABILITY**

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

9.2 Subject to condition 9.5, 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) exceed 110% of the Price paid in respect of the Equipment or Installation Services to which the claim relates.

9.3 Subject to condition 9.5, 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:

9.3.1 loss of revenue;

9.3.2 loss of business;

9.3.3 loss of contracts;

9.3.4 loss of, damage to, or corruption of data;

9.3.5 loss of anticipated savings;

9.3.6 loss of profits; or

9.3.7 indirect, consequential or special losses; whether or not the Company knew or ought to have known that such losses or damages might be incurred.

9.4 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, 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.

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

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

9.5.2 any fraud, fraudulent misrepresentation or fraudulent misstatement;

9.5.3 any indemnity given under the Contract; and/or

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

9.6 Subject to clause 9.5, 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.

## **10. CUSTOMER'S INDEMNITY**

10.1 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 contractor's) employees and/or equipment whilst on the Site; and/or

c) infringement by the Customer (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

## **11 TERMINATION AND CONSEQUENCES**

11.1 Subject to conditions 11.3, 11.4 and 11.5 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.

11.2 Subject to condition 11.6, 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 costs, damages, charges and administration charges (of a minimum of £300) in respect of the termination of the supply of any or all of the Equipment and (if applicable) Installation Services which is the subject of the Contract and expenses incurred by the Company as a result of such termination.

11.3 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 on the giving of not less than thirty days' written notice to the Customer, without further liability to the Customer.

11.4 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.

11.5 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 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).

11.6 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.

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

11.8 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 whether such sums are attributable to the period before, including or after the date the Contract terminates.

## **12. SOFTWARE**

12.1 Where the Company provides software to the Customer ("**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. 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.

12.2 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.

12.3 The Customer shall, and shall procure that all end users shall, comply with all Software licence terms and conditions which are embedded in the Software in a click through form or otherwise.

## **13. 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.

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

14.1 The Company and the Customer will 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 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

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

14.2.1 lawfully in the public domain; or

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

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

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

14.3 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 extent otherwise required by law).

14.4 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 (if applicable) Installation Services and/or arising from or out of the provision of the Equipment or (if applicable) Installation Services, for the following purposes:

14.4.1 administering the Customer's account (including, without limitation, arranging finance with lessors of the Equipment and sharing the data with members of the Company's Group);

14.4.2 enabling the Company to supply the Installation Services and Equipment to the Customer; and

14.4.3 for invoicing purposes.

14.5 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.

14.6 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.

14.7 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 14.

14.8 Subject to condition 14.9, where a party who has disclosed confidential information so requests and following termination of the Contract for whatever reason, each party who has received any confidential information of the other party shall without delay:

14.8.1 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

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

14.9 The Company shall not be required to return confidential information pursuant to condition 14.8 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 Company is required to maintain such confidential information pursuant to any Relevant Laws.

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

15.1 The Company may change the Conditions and/or Service Specific Conditions at any time and will publish any change in line with condition 15.2.

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

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

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

15.3 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 15.2 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 15.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.

15.4 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.

## **16. FRAUD AND SECURITY**

16.1 The Customer shall ensure that user names and passwords used by it and/or its personnel and/or users in connection with the 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 or password 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 Equipment. The Customer will not change or attempt to change a user name without the Company's written consent.

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

16.2.1 to suspend access to the Equipment by one or more user names 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 16); and

16.2.2 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 Equipment .

16.3 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.

16.4 The Customer accepts and acknowledges that the Equipment is not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Equipment.

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

16.6 The Company shall not be responsible for call charges or other charges resulting from fraudulent and/or unauthorised use of the Equipment or any use of the Equipment 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.

16.7 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 a reasonable 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).

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

16.8.1 preventing unauthorised use of the Equipment;

16.8.2 maintaining the security of all Equipment within its (or its employees', agents' or contractors') control; and

16.8.3 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 Equipment.

16.9 Without limitation, the Customer shall put in place and comply at all times with the following security measures:-

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

16.9.2 the Customer shall regularly and at least every 6 (six) weeks change the password set out at condition 16.9.1 above;

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

16.9.4 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

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

## **17. ANTI-BRIBERY**

17.1 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;

17.1.1 comply with all applicable Anti-Bribery Laws;

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

17.1.3 comply with the Company's Ethics and Anti-bribery Policy (available at [www.daisygroupplc.com/why-daisy/compliance/](http://www.daisygroupplc.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");

17.1.4 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;

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

17.1.6 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;

17.1.7 without prejudice to condition 17.1.6, 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

17.1.8 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.

17.2 The Customer shall:

17.2.1 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

17.2.2 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 17. The Customer shall provide such supporting evidence of compliance as Company or any member of the Company's Group may reasonably request.

17.3 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.

17.4 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 17 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 17.4, 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.

#### **18. INTELLECTUAL PROPERTY RIGHTS**

18.1 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, 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 as expressly permitted under the terms of this Contract and in accordance with the instructions of the Company or any member of the Company's Group.

18.2 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.

#### **19. GENERAL**

19.1 Subject to any deemed acceptance by the Customer under condition 4.1.4, 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.

19.2 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).

19.3 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.

19.4 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 19.4 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.

19.5 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.

19.6 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.

19.7 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.

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

19.9 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 Installation Services to the Customer. Any consent given by the Company in accordance with this condition 19.9 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.

19.10 The Company and the Customer agree that the Employment Regulations will not 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 Installation Services.

19.11 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:

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

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

19.12 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.

19.13 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.

19.14 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).

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

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

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

19.16 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.

19.17 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.

19.18 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.

19.19 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.