

## **Daisy Terms & Conditions for Supply Chain – July 2017** **To be used with AN v5.15 MSA or later only**

### **1. DEFINITIONS**

1.1 In these Conditions the following terms shall have the following meanings (or otherwise as set out in the MSA Terms):-

**“AN”** 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;

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

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

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

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

**“Equipment”** means the equipment and/or software related products to be supplied under the Services Agreement as set out on the Order Form;

**“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;

**“MSA”** means the master services agreement entered into between the Customer and AN;

**“MSA Terms”** means part 2 of the MSA;

**“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 Installation Services to be supplied under the Services Agreement;

**“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 AN in writing to the Customer in relation to the Equipment and/or Installation Services, at the time the relevant Order Form was submitted;

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

**“Service Specific Conditions”** means any additional terms and conditions which are to apply to the Services Agreement as specified on the Order Form or these Conditions in respect of specific Services (but excluding Promotional Terms); and

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

### **2. CONTRACT FORMATION**

2.1 The Order Form constitutes the Customer's offer to AN to purchase the relevant Equipment and/or Installation Services. The Services Agreement incorporates the MSA Terms. A Services Agreement shall come into force and bind both parties once:

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

2.1.2 the credit status of the Customer being to the satisfaction of AN (in AN'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 AN subject to and only upon the terms of the Services Agreement which cannot be varied unless agreed in writing by AN in accordance with condition 15 or the MSA Terms. 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 AN 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 Services Agreement, 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; and

2.3.6 the MSA Terms.

For the avoidance of any doubt, the fact that the Promotional Terms are silent on a particular matter whereas any of these Conditions, the MSA Terms, 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 AN, including drawings, specifications of weight, capacity or dimensions and particulars of shade shall not form part of the Services Agreement 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 AN and must not be copied or loaned or transferred by the Customer. The Customer acknowledges and agrees that in entering into the Services Agreement, 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 Services Agreement (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 Services Agreement 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 AN that it is entering into the Services Agreement 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 AN 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 AN to duly perform the Services Agreement.

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 AN 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 AN 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 AN 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 AN 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 AN 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 AN 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 AN of all instructions and information required for the execution of the Services Agreement. AN 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 Services Agreement.

4.1.3 Without prejudice to the generality of condition 3, the Customer shall be responsible for providing AN with any necessary instructions for delivery of the Equipment within a reasonable period prior to the estimated delivery date advised by AN 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 Services Agreement is delayed for more than twenty-eight days after AN 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 AN 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 Services Agreement provides for Delivery by instalments, any delay in the Delivery of any instalment shall not entitle the Customer to treat the Services Agreement 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 AN 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 240 volts 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 AN'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 Services Agreement shall not pass to the Customer until AN 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 AN'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 AN's property until title passes.

4.3.4 Until such time as the legal and beneficial interest in the Equipment passes to the Customer, AN shall be entitled at any time to require the Customer (at the Customer's cost) to deliver up the Equipment to AN 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 AN, pledge or in any way charge by way of security for any indebtedness, or alter or modify, any Equipment which remains the property of AN, but if the Customer does so all monies owing by the Customer to AN shall (without prejudice to any right or remedy of AN) 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 AN'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, AN will (as applicable) either repair or replace any defective Equipment to make good any defect which shall be proved to the satisfaction of AN to be the result of faulty design, materials or manufacture or re-perform any Installation Services (only where AN has supplied Installation Services under the Services Agreement) provided that subject to condition 4.4.3, AN shall have no Liability for any such defects unless the Customer notifies AN, 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, AN's Liability for defects in the Equipment shall cease, save for AN'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 AN shall apply only to defects that appear under proper use and under conditions of operation not more onerous than those declared to AN by the Customer prior to entering into the Services Agreement, 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 AN 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 AN under this condition 4 will be delivered by AN to the Customer free of charge. Any Equipment (or part) which has been returned to AN and replaced by AN shall become the property of AN.

4.4.5 AN reserves the right to charge on a quantum meruit basis for the costs of repairs and/or call-outs if AN 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 AN of any claim or consent given hereunder shall constitute or imply admission by AN of any Liability in respect of such claim.

4.4.7 Subject to clause 3.2 of the MSA Terms, 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 AN shall be entitled to fix legends bearing AN'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, AN 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 AN'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 AN approaches a finance provider or lease provider to arrange finance for the purchase or leasing of Equipment then AN 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 AN is unable to obtain relevant finance on the terms originally proposed then AN 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 AN to terminate the Services Agreement 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 AN the whole of the Price as defined in condition 6.1.1 within seven days of the date of AN'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 AN 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 AN may at its discretion at any time increase the Price to take account of any additional costs to AN (including but not limited to storage and delivery costs) by reason of Delivery and/or the Installation Services taking more than one visit.

## **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 7.4, payable immediately upon Delivery (subject to condition 4.1.6). Any delay by AN in invoicing the Price shall not shall not relieve the Customer of its Liability to pay for the same.

7.2 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 Fees.

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

7.3 AN may, without notice, withhold any payments due to the Customer under the Services Agreement or any other agreement between AN or any other member of its Group and the Customer if:

7.3.1 AN has reason to believe the Customer is in breach of the Services Agreement; and/or

7.3.2 the Services Agreement is terminated for any other reason; and/or

7.3.3 AN has reason to believe the Customer is insolvent or is likely to become insolvent.

7.4 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 AN within seven days of the date of the invoice and provide AN with all relevant information in support of the disputed charge.

7.4.1 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;

7.4.2 Where the dispute is settled in favour of AN, the Customer shall pay the disputed part of the invoice immediately and interest shall be payable in accordance with the MSA Terms.

7.4.3 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 AN to fulfil its obligations under any Services Agreement:

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

8.1.2 AN 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 AN for any costs and expenses which AN incurs as a result of such cancellation, rescheduling and/or missed appointment.

8.2 At the Customer's request, AN may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay AN'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 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 AN has agreed in writing to do it). The Customer shall provide copies of such consents, licences and permissions to AN upon request.

8.5 The Customer shall provide AN with the site and building plans (to include full details of all internal cabling runs) of the Sites and provide AN 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 AN 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 AN for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by AN 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 AN 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. AN shall have no Liability for any delay which is as a result of asbestos contamination and the Customer shall hold AN 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 Subject to clause 3.2 of the MSA Terms and without prejudice to clause 3 of the MSA Terms, in no circumstances shall AN's Liability to the Customer arising under or in connection with a Services Agreement

exceed 110% of the Price paid in respect of the Equipment or Installation Services to which the claim relates.

9.2 Subject to clause 3.2 of the MSA Terms, the Customer agrees that any cause of action that it may have against AN 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 AN, the Customer shall Indemnify AN against any:

- a) breach by the Customer of any warranties, undertakings and/or representations given under the Services Agreement and/or any failure to comply with any obligations, responsibilities and/or liabilities of the Customer set out in the Services Agreement; and/or
- b) injury and/or damage suffered or incurred by or to any of AN's (or any of AN'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 condition 11.3 below and without prejudice to any specific termination rights set out elsewhere in these Conditions or the MSA Terms, the Customer shall not be entitled (once an order has been accepted by AN) to change or cancel an order.

11.2 Subject to clause 11.2 of the MSA Terms, in the event of any termination by the Customer of the Services Agreement (in whole or in part), the Customer shall Indemnify AN against the termination of the supply of any or all of the Equipment and (if applicable) Installation Services which is the subject of the Services Agreement and expenses incurred by AN as a result of such termination.

11.3 Without prejudice to any other rights of AN under these Conditions or the MSA Terms or otherwise, AN shall be entitled at any time and for any reason whatsoever to terminate this Services Agreement on the giving of not less than thirty days' written notice to the Customer, without further Liability to the Customer.

11.4 Any provision of this Services Agreement which expressly or by implication is intended to survive, shall survive the termination or expiry of the Services Agreement.

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

11.6 For the avoidance of doubt, in the event of termination of the Services Agreement 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 Services Agreement terminates.

#### **12. SOFTWARE**

12.1 Where AN provides software to the Customer ("**Software**"), AN will grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Services Agreement. If required by AN, 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 Services Agreement 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**

AN may monitor and record calls made to or by AN 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 AN under this condition.

#### **14. FREEDOM OF INFORMATION**

14.1 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by AN in connection with

the Services Agreement the Customer will notify AN immediately of the request and give AN at least ten Business Days to make representations before releasing the requested information (save to extent otherwise required by law).

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

15.1 AN 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 AN 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 AN 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 AN 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 AN of any notice in accordance with condition 15.2 shall not constitute either acceptance of or an admission by AN 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 Services Agreement 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 AN) will be accepted by AN unless authorised by notice in writing by a Director of AN.

#### **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 AN 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 AN's written consent.

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

16.2.1 to suspend access to the Equipment by one or more user names if at any time AN 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 AN immediately of any subsequent changes to the information the Customer supplies to AN in connection with the Services Agreement.

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

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

16.6 AN 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 AN) 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 AN 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 AN for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond AN's reasonable control (save for any fraud and/or authorised use by an employee of AN 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 AN from time to time.

#### **17. INTELLECTUAL PROPERTY RIGHTS**

17.1 Any Intellectual Property Rights supplied by AN or any member of AN Group to the Customer, or specifically produced by AN for the Customer, in connection with the Services Agreement, shall be the exclusive property of AN and/or the relevant member of AN 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 AN or the relevant member of AN 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 the Services Agreement. Any Intellectual Property Rights belonging to, licensed to or supplied by AN or any member of AN Group to the Customer shall be used by the Customer as expressly permitted under the terms of the Services Agreement and in accordance with the instructions of AN or any member of AN's Group.

17.2 Any licence provided by AN 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 the Services Agreement.

#### **18. GENERAL**

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

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

18.1.2 use any trade marks or identifying logos owned or licensed to any member of the other party in any manner.

18.2 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 Services Agreement.

18.3 The Services Agreement 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.