

Daisy Terms & Conditions for the Provision of Online and Professional Services – October 2017

1. DEFINITIONS

In these Conditions, the following expressions 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 the anti-bribery and/or anti-corruption, including (without limitation) the Bribery Act.

"Bribery Act" means the Bribery Act 2010.

"Business Day" means any and all days between Monday and Friday in any week but excluding English bank holidays or public holidays.

"Charges" means the charges payable by the Customer for Services as described and/or early termination charge.

"Company" means Daisy Communications Ltd with company registration number 04145329 and registered office: Daisy House, Lindred Road Business Park, Nelson, Lancashire, BB9 5SR.

"Contract" means this agreement between the Customer and the Company for the provision of the Services incorporating these Conditions, the Order Form and any other document incorporated by reference into 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.

"Customer Data" means all data, including all text, sound or image files that you provided or are provided on your behalf, to us through your use of the Online Services.

"Director" means a director of the Company authorised to sign any Order Form;

"End User" means a user of the Online Services.

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

"License" means the right to copy, install, use, access, display, run and/or otherwise interact with a Product as applicable, and as may be further described in the Online Services Use Rights.

"Licensed Software" means any licensed software to be provided by the Company to the Customer and as set out in the Order Form.

"Licensor" means any person who grants the Company a Software licence (whether directly or indirectly), any person whose Services we distribute or otherwise resell from time to time forming part of the Services and/or any of our sub-contractors;

"Minimum Term" has the meaning given to it in condition 3.2.

"Microsoft" means Microsoft Ireland Operations Ltd

"Normal Working Hours" means 9.00am to 5.00pm on any Business Day.

"Online Service" means any online service ordered on the Order Form. An Online Service may include Supplemental Software and/or Licensed Software.

"Online Service Use Rights" means the use rights for each Product which are published at <http://www.microsoft.com/licensing/onlineuserights/english> or <http://www.daisygroup.com/terms-and-conditions/>

"Order Form" means the order form to which these Conditions are attached or which is expressed to be subject to these Conditions which sets out the detail of the order, including (without limitation) the Customer's details, Professional Services and Online Services to be supplied under the Contract.

"Parent Undertaking" has the meaning given to it in section 1162 of the Companies Act 2006.

"Party" means the Company or the Customer, and "Parties" shall refer to both of them.

"Payment Date" means the date determined by the Company on which the Company's invoices fall due for payment.

"Personal Data" has the meaning given to it in the Data Protection Act 1998.

"Product" means any Online Service, Professional Service and any Licensed Software as described on the Order Form.

"Professional Services" means any Services to be provided to the Customer by the Company or its sub-contractors as set out in the Order Form and Professional Services Service Description.

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

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

"RPI Increase" means an increase in the monthly subscription charges pursuant to condition 5.3.

"Service Description" means the Company's standard Professional Services Service Descriptions from time to time.

"Service Level Agreement" means an agreement representing commitments with the Company makes regarding delivery and/or performance of an Online Service.

"Service Provider" means any business that assists the Company with the delivery of the Online Services.

"Services" means Professional Services or provision of the Online Service

"Statement of Work" means a written document agreed between the Company and the Customer setting out the scope of the Professional Services to be provided by the Company and in addition detailing fees and expenses payable in respect of the Professional Services.

"Subscription" means the part of the Order identifying the specific Product. A Customer may have multiple Subscriptions for a single Product or for multiple Products.

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

"Supplemental Software" means software provided to the Customer as part of an Online Service and which is used with the Online Services to enable certain functions of the Online Service.

2. CONTRACT FORMATION

2.1. The Order Form constitutes the Customer's offer to the Company to purchase the relevant Service on and subject to the terms of the Order Form and these Conditions. Once such offer is accepted by an authorized

representative of the Company signing the Order Form, a Contract shall come into effect. The details recorded on the Order Form together with these Conditions (together with other document incorporated by reference into the Contract by these Conditions) shall be the exclusive terms and conditions of the Contract between the Parties (to the fullest extent permitted by law) and any such Contract shall be conditional upon the credit status of the Customer being to the satisfaction of the Company (in its sole and absolute discretion).

2.2. All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon these Conditions which cannot be varied unless agreed in writing by the Company and these Conditions supersede and override all other terms and conditions appearing elsewhere including (without limitation) any terms and conditions of the Customer referred to on any website or which the Customer may purport to apply under any purchase order or acknowledgement of delivery or similar document, and/or established between the Company and the Customer by course of dealing.

2.3. In the event of a conflict between these Conditions and the Order Form, the Order Form will prevail in respect of the relevant Service.

2.4. Any illustrations, samples or descriptive material provided by the Company, including (without limitation) 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 provided by the Company 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. The Customer shall be responsible for ensuring 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 Service (as the case may be) by the Company are accurate and fully describe the Customer's requirements and the Customer shall be liable in respect of any 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 any such any drawings, sketches, specifications, descriptions or other instructions by the Company constitutes the infringement of the intellectual property or other rights of another person.

2.6. No variation of the terms of the Contract however notified (save with regard to the manuscript details on the Order Form including, where initiated 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.

2.7. Each order for Service shall (for the purposes of this condition 2.7) 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 Service shall not entitle the Customer (to the extent that any such entitlement exists) to terminate the Contract for other Service or any other contract entered into under these Conditions.

2.8. 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 (including without limitation any of the Customer's End Users, employees, agents or contractors) of the Service shall not do such act or thing.

2.9. 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.

2.10. In connection with Customer's application for Service, the Customer hereby consents to and shall procure that its owners, Directors, officers and assigns consent to, the Company carrying out searches with credit reference agencies relating to the credit worthiness of the Customer and/or its owners, Directors, officers and assigns and the Customer undertakes to 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.

3. TERM

3.1. This Contract will commence from the date that any Service requested on the Order Form overleaf are implemented and are available for use by the Customer ("Commencement Date"), and shall endure for as long as any Service is provided to the Customer pursuant to the Contract.

3.2. Subject to condition 7 below and unless otherwise stated on the Order Form, the Online Services shall continue for the minimum term pursuant to the Contract in respect of the Online Services ("Minimum Term"). This Contract shall automatically renew thereafter until terminated by either Party giving not less than thirty (30) days' prior written notice, such notice not to terminate the Contract prior to the expiry of the Minimum Term.

4. CREDIT ACCOUNT

4.1. A Customer account will be opened and a credit limit (inclusive of VAT) will be notified to the Customer and this credit limit should not be exceeded by the Customer. The Company reserves the right to suspend the Customer's account and any use of the Online Services in the event that this credit limit is exceeded at any time. Any increase in the credit limit must be requested in writing and will be subject to approval by the Company, which may entail further credit checks. The Company does not accept responsibility for the Customer exceeding the credit limit due to any reason, including but not limited to billing cycles or delays in the availability of call data. Customers who anticipate exceeding their credit limit should contact the Company to avoid their Online Services being suspended.

4.2. Credit limits are subject to periodic review at the Company's discretion. The Company may require that a deposit be placed with the Company in cases where the Customer incurs monthly charges in excess of the credit limit and the Customer authorises the Company to debit their credit card, where details have been provided, at the Company's discretion for this excess amount overdue, or for any amount over the credit limit set.

5. CHARGES AND PAYMENT

- 5.1. The Product chosen by the Customer in respect of the Services on commencement of this Contract will remain the minimum Product selected for the Minimum Term and the terms and conditions relating to the selected Product shall apply.
- 5.2. Without prejudice to condition 5.3, the Company may on not less than fourteen (14) days' notice to the Customer, change the prices for any Product or price list, such change not to become effective during the Minimum Term of the relevant Service unless the change arises due to a change in the costs charged to the Company by its suppliers
- 5.3. The Company will increase the monthly subscription Charges for the Service in April of each year following the Commencement Date by the increase (if any) in the Rate of RPI.
- 5.4. The Customer will pay any agreed set up Charges, the monthly Charge and any other fixed monthly Charges (each as defined in the applicable Order Form), on or before the Payment Date.
- 5.5. The Customer shall be invoiced monthly in arrears for any usage based Charges and monthly in advance for any monthly access or other fixed Charges and shall pay the Charges by Direct Debit within fourteen (14) days of the date of the invoice (unless otherwise expressly agreed with the Company and set out on the Order Form). The acceptance by the Company of payment by any method other than Direct Debit may incur a monthly administration fee of £4.95 per Subscription. All payments must be received within fourteen (14) days of the Company's invoice date.
- 5.6. The Customer may be required to pay a fee of £20.00 per incident for any cancelled, dishonoured or failed Direct Debits or cheques.
- 5.7. 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.
- 5.8. Value Added Tax (VAT) and other taxes from time to time in force where appropriate shall be payable on all Charges payable pursuant to these Conditions.
- 5.9. The Customer will promptly advise the Company in writing of any change to its address or bank details.
- 5.10. The Customer authorises the Company to charge the Customer's debit/credit card, where details have been provided by the Customer, with an amount equal to the outstanding balance on the Customer's credit account, where the Customer has failed to pay the Company by the Payment Date.
- 5.11. The Customer authorises the Company to levy a service Charge of three percent (3%) where the Company is debiting the Customer's credit card account with any outstanding balance.
- 5.12. 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, 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 (without limitation) 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.
- 5.13. 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.
- 5.14. Any invoices issued by the Company in respect of the Charges shall, save in the case of manifest error, be final, conclusive and binding on the Customer.
- 5.15. If the Customer intends to dispute any charge on an invoice, the Customer must do so in writing to the Company within fourteen (14) days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge. Where the disputed charge(s) amount to:
 - 5.15.1. less than five (5) per cent of the total charges listed on the invoice, the Customer will pay the full amount of the invoice; or
 - 5.15.2. more than five (5) per cent of the total charges listed on the invoice, the Customer must pay the remaining amount of the invoice that is not in dispute.
- 5.16. Any delay by the Company in invoicing the Charges for the Service shall not prohibit the Company from raising an invoice at a later date in respect of the same nor shall it relieve the Customer of liability to pay for the same.

6. LIMITATION OF LIABILITY

- 6.1. Unless otherwise stated in these Conditions the Company makes no warranty in respect of the supply of Service and all other warranties which by reason of statute or other direction, regulation or governmental authority may be implied into a contract for the supply of the Service are hereby excluded to the fullest extent possible, save for, and to the extent of, those warranties which cannot lawfully be excluded. If the Customer is a consumer, this shall be without prejudice to its statutory rights.
- 6.2. Subject to conditions 6.3 and 6.5, in no circumstances shall the Company's liability, arising under or in connection with this Contract and whether in contract, tort (including without limitation negligence), misrepresentation, breach of statutory duty or otherwise, to the Customer in respect of one incident or series of connected incidents in any one year, exceed the lower of:
 - 6.2.1. 100% of the Charges paid for the Service (as the case may be) for the relevant Service to which the claim or claims relate in the twelve (12) months prior to the date on which the claim or claims arose, or
 - 6.2.2. £5,000 (five thousand pounds).
- 6.3. Subject to condition 6.5, under no circumstances shall the Company be liable in any event under or in connection with the Contract and whether in contract, tort (including (without limitation) negligence), misrepresentation, breach of statutory duty or otherwise for any:

- 6.3.1. loss of revenue;
- 6.3.2. loss of business;
- 6.3.3. loss of contracts;
- 6.3.4. loss of, damage to or corruption of data;
- 6.3.5. loss of anticipated savings;
- 6.3.6. loss of profits; or
- 6.3.7. indirect, consequential or special losses;

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

- 6.4. Neither Party shall be liable to the other Party for any breach of any provision of the Contract (whether in breach of contract, tort (including but not limited to negligence), misrepresentation, breach of statutory duty or otherwise) caused by any reason outside the reasonable control or responsibility of that Party including, without limitation, in respect of the Service supplied by the Company, the failure of any Service Operator to provide network services (or any element thereof) to the Company on which it was reliant for the purposes of the Contract, any Act Of God, terrorist attacks, inclement weather, accidental damage, vandalism, failure or shortage or power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, or other competent authorities.
- 6.5. Nothing in these Conditions excludes or restricts either Party's liability for:
 - 6.5.1. death or personal injury resulting from that Party's negligence or its employee's negligence (while acting in the course of their employment);
 - 6.5.2. any fraud, fraudulent misrepresentation or fraudulent misstatement;
 - 6.5.3. any indemnity given under the Contract; and/or
 - 6.5.4. anything for which the Parties cannot at law limit or exclude their liability.

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.

7. TERMINATION AND SUSPENSION OF THE ONLINE SERVICES

- 7.1. Subject to conditions 7.3, 7.4 and 7.6 below and without prejudice to any specific termination rights set out elsewhere in these Conditions, the Customer shall not be entitled (once an order has been accepted by the Company) to change or cancel an order except for termination in accordance with the conditions relating to the serving of notice to terminate the relevant Services (which shall take effect in accordance with the applicable conditions), unless otherwise agreed in writing with the Company.
- 7.2. In the event of any termination by the Customer of the Contract (in whole or in part), the Customer shall indemnify the Company in full against all loss including, but not limited to, all losses incurred by the Company as a result of the Customer terminating the Contract before the end of the Minimum Term or where the Contract has continued beyond the Minimum Contract Term before the end of the relevant notice period.
- 7.3. 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 any and/or all Contracts for Online Service on the giving of not less than thirty (30) days' written notice to the Customer, without further liability to the Customer. For the avoidance of doubt, in the event that the Company terminates a Contract under this condition 7.3, the Customer's liability to pay the Charges for Online Service shall end on the date of termination of the relevant Contract and the Customer shall not be liable to pay for the Charges applicable for the remainder of any Minimum Term applicable in respect of that Contract.
- 7.4. A Contract may be terminated forthwith by either Party by notice in writing if the other Party materially breaches its obligations under these Conditions (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 (14) days of written notice by the other Party of what the breach is and requesting that the breach is remedied. Without prejudice to the generality of the foregoing, the Company shall be permitted to terminate the Contract forthwith on notice to the Customer in the event that the Customer is in material breach of any other contract under these Conditions (as in force from time to time) and which breach, if capable of remedy, has not been remedied within fourteen (14) days of written notice by the Company of what the breach is and requesting that the breach is remedied.
- 7.5. 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 (or is proposed to be) appointed in respect of the whole or part of the assets and/or undertaking of the other Party or the other Party enters into (or proposes to enter 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).
- 7.6. 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.
- 7.7. Any implied right to terminate for convenience that the Customer may have under applicable law is hereby expressly excluded.
- 7.8. Notwithstanding anything to the contrary in this condition 7, the Company shall be entitled to suspend the Online Services without liability upon the occurrence of any of the following events;
 - 7.8.1. if the Customer fails to make payment of the Charges on the Payment Date;
 - 7.8.2. If the Company is entitled to (but at its sole discretion elects not to) terminate the Contract pursuant to condition 7.1, 7.4 or 7.5;

- 7.8.3. if any information given to the Company by the Customer is false or misleading;
- 7.8.4. if the Customer does, or allows to be done, anything which in the Licensor's or the Company's reasonable opinion may have the effect of jeopardising the operation of the Online Service;
- 7.8.5. if the Customer permits the use of the Online Services or uses the Online Service for illegal purposes.
- 7.8.6. if the Company is unable, for whatever reason, to provide the Online Services or if the Company is required to terminate this Contract by a competent administrative or regulatory authority.
- 7.8.7. if the Customer exceeds the credit limits set in the applicable Order Form.
- 7.9. Termination, suspension or disconnection under this condition 7 shall be without prejudice to the Company's rights accrued up to and beyond the date of termination, suspension or disconnection.
- 7.10. In the event of termination of the Online Services and/or this Contract by the Company in accordance with the provisions of Clauses 7.1 and 7.2, the Customer shall, within fourteen (14) days of receipt of the notice of termination, pay to the Company all outstanding Charges including (without limitation), where termination is for any of the reasons specified in conditions 7.4, 7.5 or 7.6, the amount which would have been payable for the remainder of the term of the Contract.
- 7.11. Upon termination of this Contract if the Customer made a deposit, the Company will only return any surplus to the Customer after deduction of all unpaid Charges. Any request for repayment must be made in writing.
- 7.12. Should termination take place part way through a month, no credit will be given for the post termination part of the month's access Charge(s).
- 7.13. The Customer will remain liable for all Charges incurred prior to termination regardless of when they are invoiced
- 7.14. In the event of termination of the Online Services the Customer must delete all copies of Supplemental Software and Licensed Software licensed under this agreement and destroy any associated media. The Customer may be required to provide written certification of the deletion and destruction.
- 7.15. Upon expiration or termination of each Subscription the Customer must advise the Company whether they require retention and migration of Customer Data.
- 7.16. The Customer acknowledges that migration of Customer Data is chargeable and that a separate Order Form must be submitted to the Company for these Services.
- 7.17. The Customer acknowledges that, on termination of the Contract, they will have sixty (60) days to migrate any Customer Data and that after sixty (60) days all Customer Data will be deleted.
- 8. CALL MONITORING**
- 8.1. The Customer agrees that 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.
- 9. CONFIDENTIALITY AND USE OF CUSTOMER'S INFORMATION AND DATA FAIR PROCESSING NOTICE**
- 9.1. 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:
- 9.1.1. their employees, contractors or professional advisers who shall require the information in order for the Customer or the Company to fulfil its obligations under the Contract; or
- 9.1.2. in the case of the Customer, its users to the extent that they are required to use or access the Online Service.
- 9.2. Information shall not be treated as confidential if it is:
- 9.2.1. lawfully in the public domain; or
- 9.2.2. lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or
- 9.2.3. obtained from a third person who is entitled to disclose it; or
- 9.2.4. replicated independently by someone without access or knowledge of the information.
- 9.3. 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 ten (10) Business Days to make representations before releasing the requested information (save to extent otherwise required by law).
- 9.4. The Customer acknowledges and agrees that the Company may use and/or transfer (within and beyond the European Economic Area) 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 Online Service and/or arising from or out of the provision of the Online Service, for the following purposes:
- 9.4.1. administering the Customer's account (including, without limitation, liaising with any Licensor's who are relevant to the provision of the Online Service, and sharing the data with members of the Company's Group);
- 9.4.2. notifying the Customer of changes to the Online Service, including (without limitation and unless stated otherwise on the Order Form) contacting the Customer regarding potential and/or actual enhancements to or offers in relation to the Online Service;
- 9.4.3. enabling the Company to supply the Online Service to the Customer; and
- 9.5. for invoicing purposes.
- 9.6. 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) own Products and services which it considers may be of interest to the Customer, unless the Customer specifically requests in writing that the Company does not do so on the Order Form.
- 9.7. 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.
- 9.8. 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 9.
- 10. CHANGES TO THE CONDITIONS AND CONTRACT**
- 10.1. The Company may change the Conditions at any time and will publish any change in line with condition 10.2.
- 10.2. The Company will publish any changes to the Conditions online at <http://www.daisygroupplc.com/terms-and-conditions/> (or at such other web address as is notified to the Customer by the Company from time to time):
- 10.2.1. at least thirty (30) days before the change is to take effect for changes that may be of material detriment to the Customer; and
- 10.2.2. at least one (1) day before the change is to take effect for all other changes.
- 10.3. 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 (30) 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 10.2.1 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 10.3 constitute or be deemed to constitute evidence that the relevant change is of material detriment to the Customer.
- 10.4. The Company may, if requested by the Customer, provide additional Services to be included within the Online Services under such additional terms and conditions as may be notified by the Company from time to time.
- 11. ANTI-BRIBERY**
- 11.1. 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:
- 11.1.1. comply with all applicable Anti-Bribery Laws and not cause the Company to breach any Anti-Bribery Laws;
- 11.1.2. not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;
- 11.1.3. comply with the Company's Ethics and Anti-bribery Policy (available at www.daisygroupplc.com/why-daisy/compliance/ or at such other web address as is notified to the Customer by the Company from time to time) as the Company may update them from time to time.
- 12. THE SERVICES**
- 12.1. GENERAL**
- 12.1.1. Any Contract for the provision of Services based on an order which is accepted by the Company pursuant to condition 2.1 is, until the Commencement Date, conditional on the Company providing confirmation by email to the Customer that the terms stated on the Order Form of the applicable Contract do not contain any errors or omissions.
- 12.1.2. The provision of any assistance or Services in relation to the Customer's migration or transfer to the Services is expressly excluded from the scope of the Services and the Contract. The Company makes no warranty or other representation about the suitability of the Services for the Customer's requirements and the Services are provided 'as-is'. By entering into the Contract the Customer warrants and represents to the Company that it has independently satisfied itself that the Services are suitable for its requirements and without reliance on any representation, whether written or oral made by the Company or any of its representatives.
- 12.1.3. In consideration for the payment of the Charges by the Customer, the Company shall use its reasonable endeavours to provide the Services in accordance with and subject to the terms of the Contract.
- 12.1.4. The Company shall provide the Services using reasonable skill and care.
- 12.1.5. The Company shall use reasonable efforts to provide the Services in accordance with the Service Level Agreement. The Company may change the Service Level Agreement at any time by publishing the changes on its website (at www.daisygroupplc.com or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect. The Customer's sole and exclusive remedy (if any) for breach of the Service Level Agreement shall be the payment of service credits in accordance with the Service Level Agreement.
- 12.1.6. The Company provides no guarantees that the provision of the Services shall be uninterrupted or fault free nor does it provide any commitment regarding the availability of the Services to the Customer or Users

- 12.1.7. Notwithstanding anything to the contrary in the Contract, the Company shall be entitled to make changes to the Services (or any part thereof) which do not have a material adverse effect on the Services and shall where the Company deems it practical to do so, give the Customer written notification of the same.
- 12.1.8. The Customer acknowledges that the performance of the Online Service is reliant on the Minimum system requirements and that failure to adhere to these requirements will affect the Customers ability to use the Products.
- 12.2. UNAVAILABILITY
- 12.2.1. The Customer acknowledges and accepts that:
- (a) the Company provides no guarantees or other commitments regarding the timeliness within which the Services shall be provided (time not being of the essence in relation to the provision of the Services and/or the performance of any of the Company's obligations under the Contract); and
 - (b) subject to condition 6.3 and 6.5, the Company hereby disclaims any and all liability to the Customer in respect of any loss or damage suffered by it as a result of the Services being unavailable.
- 12.3. CUSTOMER OBLIGATIONS
- 12.3.1. The Customer shall:
- (a) be responsible for ensuring that any use of the Online Services complies with all relevant laws, including but not limited to
 - i. U.S Export Administration Regulations
 - ii. end-user, end-use and destination restrictions.
 - iii. laws and regulations addressing accessibility for users with disabilities , and
 - iv. all applicable electrical and telephony regulations.
 - (b) only use the Services for its internal use and shall not resell or sub-license or attempt to resell or sub-license or otherwise make available the Services (or any part of them) to any third party;
 - (c) be responsible for the safe custody and safe use by it of the Services and without prejudice to the generality of the foregoing the Customer agrees and undertakes only to use the Services in accordance with such conditions as may be notified to it in writing by the Company from time to time; and
 - (d) not contravene, and not by any act or omission, cause the Company to contravene, any Relevant Laws.
- 12.3.2. Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, Trading Standards, the Information Commissioner) in connection with any misuse or suspected misuse of the Services, and the Customer consents to the Company co-operating with any such authority and The Customers Licensor's in connection with any misuse or suspected misuse or suspected fraudulent activity related to or connected with the Services and agrees, without prejudice to the generality of the foregoing, that the Company will be entitled to divulge the name and address and account information relating to the Customer to such third parties.
- 12.3.3. To enable Customers to have a better understanding of what is and is not acceptable when using the Services, the Company has developed an Online Services Acceptable Use Policy. The Customer shall (and shall procure that all Users) comply with the Online Services Acceptable Use Policy. The Company may change the Online Services Acceptable Use Policy at any time by publishing the changes on its website (at www.daisygroupplc.com or at such other URL as is notified to the Customer by the Company from time to time) thirty days before the change is to take effect.
- 12.3.4. The Customer will be deemed to have taken any action that it permits, assists or facilitates any person or entity to take related to the Contract, Customer Content or use of the Services. The Customer is responsible for Users' use of Customer Content and the Services. The Customer will ensure that all Users comply with the Customer's obligations under the Contract. If the Customer becomes aware of any violation of its obligations under this Agreement by a User, it will immediately notify the Company and terminate such User's access to Customer Content and the Services.
- 12.3.5. The Customer agrees that it must obtain all of the relevant Licenses to run the Online Services.
- 12.4. SUSPENSION OF THE SERVICES
- 12.4.1. Without prejudice to any other right of the Company to suspend or terminate the provision of the Services (or any part thereof), the Company may at its sole discretion elect to suspend forthwith provision of the Services until further notice without further liability to the Customer either orally (confirming such notification in writing) or in writing in the event that:
- 12.4.1.1. the Customer is in breach of a material term of these Conditions and/or the Contract and/or any other contract between the parties from time to time including but not limited to the Customer's failure to pay Charges (or any of them) to the Company on the due date;
 - 12.4.1.2. the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative authority;
 - 12.4.1.3. the Company has reasonable grounds to believe that any Service (or any part thereof) is being used fraudulently or unlawfully;
 - 12.4.1.4. any maintenance or repair is necessary or required to the Online Services.
- 12.4.2. The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the Company in the implementation of a suspension pursuant to condition and/or the recommencement of the provision of the Services as appropriate, save in the case of a suspension, pursuant to condition 12.4.1.1.
- 12.5. ACCESS AND SECURITY
- 12.5.1. The Customer will not have access to Customer Content hosted using the Services during a suspension or following termination of the Contract.
- 12.5.2. It is the Customer's responsibility to maintain appropriate security and protection of Customer Data, which may include the use of encryption technology to protect Customer Data from unauthorised access.
- 12.6. PROFESSIONAL SERVICES
- 12.6.1. Where Professional Services are specified on the Order Form they will be delivered in accordance with the restrictions and scope of the relevant Service Description ordered by the Customer.
- 12.6.2. The Customer acknowledges and agrees that any prices or timescales quoted by the Company for Professional Services are estimates only.
- 12.6.3. In the event that the Customer requires Professional Services that are out of scope then the Customer and the Company shall agree a Statement of Work which shall form part of the relevant Order Form.
- 12.6.4. The Company will provide the Professional Services to you in accordance with the Order Form and shall use all reasonable endeavours to deliver what is in scope of the Service Description or relevant Statement of Work.
- 12.6.5. All charges in respect of Professional Services specified on any Statement of Work shall be on a time and materials basis in accordance with the Company's standard rates from time to time.
13. SITES
- 13.1. To enable the Company to fulfil its obligations under any Contract:
- 13.1.1. the Customer shall permit or procure permission for the Company and any other person(s) authorised by the Company to have reasonable access to the Customer's Sites, Equipment and any other relevant system and other equipment and shall provide such reasonable assistance as the Company requests.
 - 13.1.2. the Company will normally carry out work by appointment and during Normal Working Hours but may request the Customer to (and the Customer shall) provide access at other times. In the event that the Customer cancels, reschedules or misses any pre-arranged appointment, it shall be liable to the Company for any costs and expenses which the Company incurs as a result of such cancellation, rescheduling and/or missed appointment.
- 13.2. 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.
- 13.3. The Customer warrants, represents and undertakes that it has adequate health and safety provisions in place at its Sites.
- 13.4. The Customer shall procure all consents, licences and permissions necessary from landlords or other third parties for the carrying out of preparation work, installation of the Services at the Sites (save to the extent the Company has agreed in writing to do it).
- 13.5. In the event that the Customer is not able to procure the necessary consent to provide the Services within ninety days from the Connection Date the Company will be able to terminate the Contract forthwith by giving the Customer written notice without any liability.
- 13.6. If the Customer has not managed to procure the necessary consents and the Company has commenced work the Customer shall, on request by the Company, refund to the Company the cost of all such work (including, without limitation, staff costs and equipment costs) at its then current rates.
14. SOFTWARE LICENCES
- 14.1. Save for any express licences granted by the Company to the Customer pursuant to the Contract, the Customer is responsible for maintaining licences and adhering to the licence terms of any software it uses or runs using the Services.
- 14.2. The Customer shall comply at all times with the provisions of the Online Service Use Rights and any other third party licence terms applicable to any software which is licensed to it as part of the Services.
- 14.3. Without prejudice to the generality of condition 14.2, as part of the Services, the Customer will be provided with software (including related documentation) developed and owned by Microsoft (collectively, the "Microsoft Software"). Microsoft require that it agrees to these additional terms and conditions:
- 14.3.1. the Microsoft Software is neither sold nor distributed to the Customer.
 - 14.3.2. the Customer shall use it solely as part of the Services;
 - 14.3.3. the Customer shall not transfer or use the Microsoft Software outside the Online Services;
 - 14.3.4. the Customer shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on Microsoft's or the Service Providers Software;
 - 14.3.5. the Customer shall not reverse engineer, decompile or disassemble the Microsoft Software, except to the extent expressly permitted by applicable law.

- 14.4. The Customer acknowledges that Licenses for desktop operating system software available under this agreement are upgrade Licenses only ("OS Upgrade Licenses") and not full Licenses. The Customer understands that all computers that will run OS Upgrade Licenses must be licensed to run one of the full qualifying desktop operating systems identified in the Online Service Use Rights.
- 14.5. The Customer acknowledges and agrees that the Microsoft Software is licensed to the End User and not sold.
- 14.6. The Company grants the Customer the right to reassign OS Upgrade Licenses from the original computer to a replacement computer within their enterprise so long as:-
- 14.6.1. the replacement computer is licensed to run a full qualifying operating system identified in the Online Services Use Rights
- 14.6.2. any OS Upgrade License software from the original computer is removed.
- 14.6.3. that reassignment is not within 90 days of the last reassignment.
- 14.7. The Customer acknowledges that Licenses must be assigned to a single user or device. Licenses may be reassigned as described in the Online Service Use Rights.
- 14.8. The Customer acknowledges and agrees that like the Company, Microsoft disclaims, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Services and/or the provision of the Microsoft Software.
- 14.9. The Customer acknowledges and agrees that Microsoft Corporation is not responsible for providing any support in connection with the Services and/or the Microsoft Software. The Customer shall not contact Microsoft for support.
- 14.10. The Customer is not granted any right to use the Microsoft Software in any application controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario (collectively, "High Risk Use"). Microsoft and its suppliers disclaim any express or implied warranty of fitness for High Risk Use. High Risk Use does not include utilization of the Microsoft Software for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
- 15. FRAUD AND SECURITY**
- 15.1. The Customer must ensure that user names, passwords and/or PINs used by it and/or its personnel and/or users in connection with the Online Service are kept confidential and are only used by authorised users. The Customer will inform the Company immediately if the Customer knows or suspects (or ought reasonably to know or suspect) that a user name, password or PIN has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer will not change or attempt to change a user name without the Company's written consent.
- 15.2. The Company reserves the right (at the Company's sole discretion):
- 15.2.1. to suspend user names and password access to the Online Service if at any time the Company thinks that there has been or is likely to be a breach of security; and
- 15.2.2. 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 Online Service.
- 15.3. 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.
- 15.4. The Customer accepts and acknowledges that the Online Service is not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Online Service.
- 15.5. The Customer acknowledges that the Company has no control of a Customer's system configuration, security or other features/services.
- 15.6. The Company shall not be responsible for Charges or other charges resulting from fraudulent and/or unauthorised use of the Online Service by the Customer, its End Users or any third parties (who are not employees of the Company) and the Customer agrees to pay all additional charges related to such fraudulent and/or unauthorised use.
- 15.7. Any assistance given by the Company in relation to fraudulent and/or authorised use by the Customer or third parties (or the prevention of such use) will be on an endeavours basis only and no liability can be accepted by the Company for any loss sustained by the Customer via fraudulent and/or unauthorised means that are beyond the Company's reasonable control (save for any fraud and/or authorised use by an employee of the Company acting in that capacity).
- 16. AUDIT**
- 16.1. The Customer agrees that during the Term of any Contract and for three years thereafter they will keep proper records relating to the Subscriptions and user of Products under this Contract.
- 16.2. The Company may request that the Customer conducts an internal audit of all the Products in use.
- 16.3. By requesting an audit the Company does not waive its rights to enforce this agreement or to protect the Company and its supplier's intellectual property by any other means permitted by law.
- 16.4. The Customer agrees that if verification or self-audits reveal any under licensed use, the Customer must promptly order sufficient licences to cover current and historical use within 10 days.
- 16.5. The Customer acknowledges and agrees that if non-compliance is found, the Customer agrees to reimburse the Company's and Licensor's costs for conducting an audit.
- 17. GENERAL**
- 17.1. Subject to any deemed acceptance by the Customer under condition 10.3, no forbearance or indulgence shown or granted by the Company to the Customer whether in respect of these 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.
- 17.2. The Contract (including in relation to non-contractual matters) 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).
- 17.3. 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.
- 17.4. 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 17.4 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.
- 17.5. 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 set out in these Conditions and any relevant Service Specific Conditions in all respects.
- 17.6. 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.
- 17.7. 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.
- 17.8. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 17.9. 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 (or in the case of multiple Contracts the last Contract to be terminated or expire), 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 Online Service to the Customer. Any consent given by the Company in accordance with this condition 17.9 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.
- 17.10. The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of the Company in connection with the Online Service.
- 17.11. 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.
- 17.12. 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.
- 17.13. 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).
- 17.14. Except with the prior written consent of the other Party, neither Party shall:
- 17.14.1.1. make any public statement about the Online Service or otherwise publicise the Contract or any information relating to it; or
- 17.14.1.2. use any trademarks or identifying logos owned or licensed to any member of the other Party in any manner.
- 17.15. 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.
- 17.16. 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.

- 17.17. This Contract constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Each of the Parties acknowledge that in entering into this Contract it has not relied on any oral or written representation, warranty or other assurance (except as provided for and referred to in this Contract) and, subject at all times to condition 6.5.2, waives all rights and remedies which might otherwise be available to it in respect thereof.
- 17.18. 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.