



DCS FRAUD GUARDIAN TERMS AND CONDITIONS

1 DEFINITIONS

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

“Anti-Bribery Laws”	means any and all statutes, statutory instruments, bye-laws, orders, directives, treaties, decrees and laws which relate to anti-bribery and/or anti-corruption, including the Bribery Act 2010;
“Business Day”	means any and all days from Monday to Friday (inclusive) in any week but excluding English bank holidays or public holidays;
“Carrier”	means the relevant third party public telecommunications operator or third party network service provider;
“Change”	means any change to these Conditions and/or any other provision of this Contract made in accordance with condition 17;
“Charges”	means the costs and charges payable by the Customer to the Company for the Services, as calculated and payable in accordance with the Order Form and/or these Conditions;
“Company”	means Daisy Corporate Services Trading Limited a company registered in England and Wales with company registration number 2888250 whose registered office is Daisy House, Lindred Road, Business Park, Nelson, Lancashire BB9 5SR;
“Company Personnel”	means the Company’s employees, agents, sub-contractors and consultants and any other person(s) authorised by the Company engaged in the Services;
“Company Software”	means any software (whether on premise software or software as a service (SaaS)) licensed or otherwise made available by the Company to the Customer to enable the Customer to use and/or benefit from the Services, as set out in the Order Form, but excluding any Third Party Software;
“Conditions”	means these terms and conditions;
“Contract”	means the agreement between the Customer and the Company for the provision of the DCS Fraud Guardian incorporating these Conditions and any Promotional Terms incorporated into this Contract;
“Contract Year”	means a period of twelve months commencing from either (i) the Effective Date of the Contract; or (ii) any subsequent annual anniversary of the Effective Date;
“Customer”	means the person, firm or company specified in the Order Form and any other person appearing to act within that person, firm or company’s authority and includes where relevant the Customer’s permitted assigns;
“Customer Information”	means as defined in condition 3.2;
“Customer Input Materials”	means all Documents, Customer Information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications and any materials specified as Customer Information and/or Customer Input Materials in this Contract;
“Customer Premises”	means a place of business of the Customer at which the Services are to be provided;
“Customer Representatives”	means those relevant employees, agents or representatives of the Customer that are authorised by the Customer to deal with the Company in respect of the Services and that are reasonably knowledgeable in respect of the Services, including but not limited to those authorised to provide relevant Customer Input Materials and/or request additional Services;
“DCS Fraud Guardian”	means the call analytics service known as DCS Fraud Guardian (as modified or substituted by the Company from time to time);



“Document”	means any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
“Effective Date”	means the date the Services commence and the Contract is formed;
“Emergency”	means a state of emergency that demands immediate action resulting from a danger or threat of danger to the United Kingdom from foreign or domestic sources and declared to be in existence by governmental authority;
“End User”	means any individual end user of the Services, including but not limited to the employees of the Customer;
“Group”	means together a party, its Parent Undertakings, its Subsidiary Undertakings and the Subsidiary Undertakings of any of its Parent Undertakings from time to time;
“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;
“Minimum Term”	means the minimum contract period for the applicable Services as provided for under the relevant Service Specific Conditions and/or as set out in the Order Form;
“Normal Working Hours”	means 9.00am to 5.30pm on any Business Day;
“OFCOM”	means the Office of Communications and/or any successor body;
“Order Form”	means the order form or other document to which either these Conditions are attached or which is expressed to incorporate or be subject to these Conditions which sets out (amongst other things) the Customer’s details and the Services to be supplied pursuant to this Contract, together with any Promotional Terms (if applicable);
“Parent Undertaking”	has the meaning given to it in section 1162 of the Companies Act 2006;
“Pre-Existing Materials”	means all Documents, Software, information and materials provided by the Company relating to the Services, which existed prior to the Effective Date, including computer programs, any Company portal, data, reports and specifications;
“Promotional Terms”	means any additional terms which apply to the Price and/or Charges and which may be specified in an Order Form and/or notified by the Company in writing to the Customer in relation to the Services, at the time the relevant Order Form was submitted;
“Relevant Laws”	means any statute, regulation, bylaw, ordinance or subordinate legislation which is in force for the time being to which a party is subject; the common law as applicable to the parties (or any one of them); any binding court order, judgment or decree applicable to the parties (or any one of them); and any applicable industry code, standard or accreditation terms that are either (i) enforceable by law which is in force for the time being, and/or (ii) stipulated by any regulatory authority to which the Services are subject (including but not limited to OFCOM);
“Service Specific Conditions”	means those conditions set out in condition 6;
“Services”	means any of the services supplied by the Company under or in connection with this Contract, as specified in an Order Form and/or the relevant Service Specific Conditions;
“Software”	means (if any) Company Software and/or any Third Party Software;
“Subsidiary Undertaking”	has the meaning given to it in section 1162 of the Companies Act 2006;
“Third Party Software”	means any software (whether on premise software or software as a service (SaaS)) made available by the Company to the Customer to be used by the Customer in connection with the Services and in respect of which the Customer is required to



enter into a direct end user licence agreement with the relevant Vendor of such Software, as set out in an Order Form; and

“Vendor” means any third party manufacturer of any Third Party Software, in connection with the Services.

2 CONTRACT FORMATION

- 2.1 The Customer benefiting from and/or using the DCS Fraud Guardian Service shall bind the Customer and the Company to these Conditions and the Contract shall be formed from and including the Effective Date.
- 2.2 All quotations, estimates and tenders are given and contracts are made by the Company subject to and only upon the terms of this Contract which cannot be varied unless agreed in writing by the Company in accordance with condition 17. These Conditions as referred to in the Order Form are the only terms and conditions on which the Company will supply any Services to the Customer under an Order Form and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Customer purports to apply under any purchase order, confirmation, of order or similar document, (whether or not such document is referred to in this Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. Unless expressly set out in this Contract, all other terms, conditions and warranties which are implied by law are excluded to the fullest extent permitted by law.
- 2.3 In the event of a conflict or inconsistency between any of the documents which constitute the Contract, the following descending order of precedence shall apply:
- 2.3.1 the Order Form;
 - 2.3.2 any applicable Promotional Terms;
 - 2.3.3 these Conditions;
 - 2.3.4 any other documents referred to in the Order Form or in these Conditions.
- 2.4 For the avoidance of any doubt, the fact the Promotional Terms are silent on a particular matter whereas any of these Conditions and/or the Order Form make provision for the same, shall not be deemed to give rise to a conflict or inconsistency.
- 2.5 Any delay or failure to supply Services under this Contract shall not entitle the Customer (to the extent that any such entitlement exists to terminate this Contract) to terminate any other contract for other equipment, software and/or services between the parties, whether or not entered into under these Conditions or otherwise.

3 CUSTOMER INFORMATION AND INPUT MATERIALS

- 3.1 The Customer shall be responsible for providing to the Company all Customer Input Material and Customer Information relevant to the provision of Services (as the case may be) in a timely manner and shall ensure that it is accurate and complete in all material respects to enable the Company to perform its obligations under this Contract.
- 3.2 Without limitation to the generality of condition 3.1, the Customer shall ensure that the details set out in an Order Form and any drawings, sketches, specifications (including without limitation in respect of the type and capacity of any available or installed connectivity), descriptions or instructions supplied by the Customer or any agent or representative of the Customer in connection with the supply of Services by the Company (“Customer Information”) are accurate and fully describe the Customer’s requirements.
- 3.3 The Customer will inform the Company promptly of any subsequent changes to any Customer Information and/or Customer Input Material that the Customer supplies to the Company in connection with this Contract.
- 3.4 Any undertaking by the Customer to do something or not to do something shall be deemed to include an undertaking that the Customer will be responsible for procuring that any End User of the Services including (without limitation) any of the Customer’s employees, agents or contractors, shall do or not do such thing.

4 TERM AND MINIMUM TERM

- 4.1 This Contract shall commence on the Effective Date and shall continue in full force and effect unless it is terminated in accordance with condition 10 (Force Majeure) or 12 (Termination), the Service Specific Conditions or any other express right of termination provided for in this Contract (the “Term”).
- 4.2 Where this contract is subject to a Minimum Term, this Contract shall continue in full force and effect for such Minimum Term and thereafter unless and until it is terminated in accordance with the condition 10 (Force Majeure) or 12 (Termination), the Service Specific Conditions or any other express right of termination provided for in this Contract.

5 COMPANY’S OBLIGATIONS

- 5.1 In providing the Services, the Company shall:
- 5.1.1 use reasonable skill and care;
 - 5.1.2 use Company Personnel who are suitably skilled and experienced to perform tasks assigned to them; and
 - 5.1.3 comply with all Relevant Laws that are applicable to the Company and the performance of the Services generally.
- 5.2 Unless otherwise expressly agreed in this Contract, the Company will interact with and provide all Services through and in communication with the Customer Representatives, not directly in communication with the End Users themselves.

6 SERVICE SPECIFIC CONDITIONS

- 6.1 For the purposes of interpreting the provisions in this condition 6 only, 'line' or 'lines' shall mean a PSTN line, a Multi-Line PSTN, ISDN2, ISDN 30 or SIP Endpoint. **The DCS Fraud Guardian service shall not apply to or benefit any VOIP services.**
- 6.2 The provision of the DCS Fraud Guardian service is dependent on the Company providing to the Customer both the lines and calls in relation to which the service is to be delivered. If for any reason the Company ceases to provide such lines and/or calls to the Customer, the DCS Fraud Guardian service shall terminate with immediate effect in relation to those lines and calls without liability for the Company. Where the DCS Fraud Guardian service is terminated in this way, the Customer shall not be entitled to any refund of any monthly Charges paid in respect of such service.
- 6.3 The DCS Fraud Guardian service shall only apply to the lines specified as benefiting from the DCS Fraud Guardian service in the relevant Order Form (or as otherwise agreed in writing by the Company).
- 6.4 The DCS Fraud Guardian service is provided solely for the Customer's use and the Customer may not resell or attempt to resell the DCS Fraud Guardian service (or any part of it) to any third party.
- 6.5 The Customer acknowledges and agrees that the Company shall be entitled (but not obliged) to automatically suspend any line that reaches or exceeds a daily spend limit of £500 (or any other daily spend limit for that line which may otherwise be specified in the relevant Order Form) (the "Cap") and the Customer's liability to pay for call Charges, which did not arise due to any act or omission of the Customer or breach of the relevant Contract by the Customer and which are proven to arise from fraudulent activity perpetrated by a third party, in respect of any line which benefits from the DCS Fraud Guardian service shall (provided that the Customer provides the Company with an Action Fraud reference number in relation to any alleged fraudulent activity (please see <https://www.actionfraud.police.uk/contact-us>)) be limited to a daily amount equal to the Cap for that line.
- 6.6 The Customer further acknowledges and agrees that regardless of whether or not the daily Cap has been reached in respect of any line the Company may also (at the Company's sole discretion) suspend access to the Services pursuant to condition 11.1.3.
- 6.7 The Customer shall provide the Company with an up-to-date point of contact with 24x7 availability who the Company shall notify by email of any suspected fraudulent usage of the Equipment and/or Services or of any suspension of any Service. The Customer is solely responsible for updating such point of contact information as necessary. In the event the Customer has not provided an email address for the notification anticipated by this condition, the Company will endeavour to notify the Customer using any other email address it may have on record for the Customer. The Customer shall immediately reply to any email received from the Company notifying it of potential fraudulent activity with its instructions regarding suspending or otherwise relating to such activity and if the Customer does not reply (or until the Customer does reply), the Company shall be under no duty or obligation to suspend such activity.
- 6.8 The Customer acknowledges and agrees that in order to suspend and/or reactivate any lines the Company will be required to place and remove barring orders with the relevant third party suppliers and Carriers. In certain circumstances this may result in all outgoing calls from the line being restricted except Emergency Calls.
- 6.9 The Company will reactivate any suspended Services when the Customer has satisfied the Company (in its sole discretion) that the reason for the suspension has been resolved and the relevant Services are unlikely to be at material immediate risk of fraudulent usage.
- 6.10 The Company makes no representation that the DCS Fraud Guardian service will be error-free or will detect, limit or prevent any fraudulent usage of the Services and/or Equipment or will not block or affect any legitimate use of the Services and/or Equipment. The Company disclaims any warranty of any kind, expressed or implied, including, but not limited to, warranties of fitness for a particular purpose, merchantability or satisfactory quality, with regard to the nature, quality and accuracy or validity of the DCS Fraud Guardian service. In particular (but without limitation), the Company accepts no liability for any delays in suspending or reactivating any Service which are beyond its reasonable control (including, without limitation, delays by third party suppliers or Carriers in activating or removing barring orders).

- 6.11 Subject to the continuing supply of call data by the relevant Carrier or other third party supplier, in the event of a fault occurring in the DCS Fraud Guardian service the Company will use reasonable endeavours to rectify the fault as soon as reasonably practicable, however the Company shall have no liability to the Customer for any fault occurring, or any interruption to the DCS Fraud Guardian service whether in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise, howsoever caused (including but not limited to any congestion, fault, interruption or interference with the network; any fault, interruption or interference with the power supply to the network, any act or omission by the relevant carrier or third party supplier, or any known or unknown viruses which cause interruption or interference with the network).
- 6.12 The Customer may terminate the DCS Fraud Guardian service at any time on or after the expiry of the Minimum Term specified in the relevant Order Form by giving thirty days' notice in writing to the Company.
- 6.13 The Company may terminate the DCS Fraud Guardian service with immediate effect and without any liability for the Company if the Customer is subject to more than one suspension under condition 6.5 and/or condition 11.1.3 in any consecutive three month period.
- 6.14 The Customer acknowledges and agrees that condition 11 applies to the Customer notwithstanding any DCS Fraud Guardian service taken by the Customer.
- 6.15 For the purposes of condition 6.5 a "day" shall be deemed to be the period commencing at one second past midnight on any particular day and ending at midnight that day, and "daily" shall be construed accordingly.
- 6.16 The monthly Charges for the DCS Fraud Guardian service shall be calculated based on the number and type of lines which the Customer is connected with by the Company.
- 6.17 The Company shall have the right to alter the Charges for the DCS Fraud Guardian service from time to time by giving the Customer not less than fourteen days' notice.
- 6.18 The Company may increase the Charges for the DCS Fraud Guardian service in April of each year by the increase (if any) in the Rate of RPI.

7 CHARGES

- 7.1 The Charges shall be as set out in the Order Form.
- 7.2 All Charges referred to under these Conditions, the Order Form and any Promotional Terms are (unless otherwise stated) exclusive of Value Added Tax (VAT) and any taxes of a similar nature which may from time to time be introduced, which will be payable by the party paying the relevant sum at the rates in force at the date of the relevant invoice.

8 INVOICING AND PAYMENT

- 8.1 The Company shall be entitled to raise invoices at the times and/or frequency set out in the Service Specific Conditions and/or the Order Form or, if no such times are provided for, at any time following performance of the relevant Services.
- 8.2 Unless e-billing is not expressly excluded in an 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 in the Order Form that the invoice is ready for downloading. Where e-billing is expressly excluded in an 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 Order Form.
- 8.3 Unless otherwise stated in the Service Specific Conditions, in the Order Form or otherwise expressly provide in this Contract, subject to condition 8.5, all Charges shall be paid by the Customer in full and cleared funds and within 30 (thirty) days from the date of each invoice. Payment of all sums due to the Company shall be made without any set-off whatsoever.
- 8.4 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 4 (four) per cent per annum above the current base rate of HSBC Bank plc from time to time.
- 8.5 If the Customer, acting reasonably and in good faith, intends to dispute any amount due under an invoice, the Customer must do so in writing to the Company within 30 (thirty) days of the date of the invoice and provide the Company with all relevant information in support of the disputed charge and must in any event pay any part of such invoice that is not disputed.
- 8.6 The Customer shall procure that its owners and/or assigns are made aware of the Company carrying out searches with credit reference agencies relating to the creditworthiness of the Customer and/or its owners and assigns and the Customer shall, upon the Company's request, promptly supply or procure the supply of all information requested for a credit search with a credit reference agency.

9 LIMITATION OF LIABILITY

- 9.1 Save as expressly set out in these Conditions or otherwise in this Contract, the Company makes no warranty in respect of the supply of Services and all other terms, conditions and warranties which may otherwise be implied into this Contract by law or course of dealings between the parties are hereby excluded to the fullest extent legally possible.
- 9.2 Nothing in these Conditions excludes or restricts:
- 9.2.1 either party's liability for:
- (a) death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);
 - (b) any fraud, fraudulent misrepresentation or fraudulent misstatement;
 - (c) any indemnity under these Conditions;
 - (d) breach of any condition to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and/or
 - (e) anything for which the parties cannot at law limit or exclude their liability; or
- 9.2.2 the Customer's liability to pay the Price and the Charges due and payable.
- 9.3 Subject to condition 9.2 and 9.4, neither party's liability to the other party for breach of contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of its obligations under or in connection with this Contract, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of any of that party's obligations under this Contract in any Contract Year shall exceed 100% of the Price and/or Charges paid or payable in respect of such Contract in the Contract Year during which the acts or omissions giving rise to the liabilities occurred.
- 9.4 Subject to condition 9.2, the liability of each party to the other party for breach of contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of its obligations under or in connection with this Contract in respect of damage to or loss of leasehold or freehold real estate property shall not exceed £5,000,000 (five million pounds) in aggregate.
- 9.5 Subject to condition 9.2, under no circumstances shall any member of the Company Group or the Customer be liable to the other party under or in connection with this Contract for breach of contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any of the following losses or damages (in each case whether direct, indirect, special or consequential) even if such losses and/or damages were foreseeable or in the parties' reasonable contemplation or the Company was advised of the possibility of them in advance:
- 9.5.1 loss of profits;
 - 9.5.2 loss of business;
 - 9.5.3 depletion of goodwill, reputation or loss of opportunity and/or similar losses;
 - 9.5.4 loss of anticipated savings;
 - 9.5.5 loss of contract;
 - 9.5.6 loss of production, operating time or use;
 - 9.5.7 liability of the Customer to third parties (whether direct, indirect or consequential)
 - 9.5.8 any loss to or interference with or corruption of any programs, information or data be it during the delivery, storage or transmission of the same or otherwise; or
 - 9.5.9 any pure economic loss or damages.
- 9.6 Each party will take reasonable steps to mitigate a loss, including where that loss occurs as a result of anything that may give rise to a claim under an indemnity.
- 9.7 The parties agree that the limitations and exclusions of liability set out in this Contract reflect the allocation of risk agreed between them and that such limitations and exclusions of liability are proportionate to the Charges to be paid to the Company. The Customer acknowledges and accepts that the Company has recommended that the Customer effects insurance for any losses or liabilities caused by any act or omission of the Company which shall not be recoverable from the Company under this Contract.

10 FORCE MAJEURE

- 10.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under this Contract by any reason outside the reasonable control or responsibility of that party including, without limitation, for the failure of any Carrier to provide network capacity and/or connectivity (or any element thereof) to the Company on which it was reliant for the purposes of this Contract, any act of God, acts of public enemies, terrorist attacks, nuclear chemical or biological contamination, inclement weather, accidental damage, vandalism, utility outage or failure or shortage or power supplies (save to the extent the Company takes express responsibility for any uninterruptable power supplies under this Contract), flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, denial of service attack (save to the extent the Customer has purchased a mitigation service from the Company under this Contract), hacking, spamming, virus or other hostile computer program, war, blockade, riot, explosions, embargo, pandemic, any act or omission or regulation(s) of Government, highways authorities, or other competent authorities ("Force Majeure Event"), that party shall not be in breach of this Contract or otherwise liable to the other party for any such failure or delay in the performance of such obligations and the time for performance of such obligations shall be extended accordingly, provided that:
- 10.1.1 it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
- 10.1.2 it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 10.2 If any Force Majeure Event prevails for a continuous period of more than 30 (thirty) days, either party may terminate the relevant part(s) of this Contract by giving 7 (seven) days' written notice to the other party. On the expiry of this notice period, the relevant part(s) of this Contract will terminate accordingly, without affecting the remaining part(s) of this Contract.

11 SUSPENSION

- 11.1 Without prejudice to any other right of the Company to suspend or terminate any or all of the Services under these Conditions, the Company may at its sole discretion elect to suspend provision of any Services until further notice without liability to the Customer having given the Customer reasonable notice either orally (confirming such notification in writing) or in writing in the event that:
- 11.1.1 the Customer is in breach of a material term of this Contract, including but not limited to the Customer's failure to pay the Price and/or the Charges (or any of them) to the Company within 7 (seven) days of written notice from the Company notifying the Customer of its intention to suspend if payment of the overdue amount is not remedied;
- 11.1.2 an Emergency occurs and/or the Company is obliged to comply with an order, instruction or request of the Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM or the Phone-paid Services Authority);
- 11.1.3 the Company has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party or in an unauthorised manner or that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under condition 18);
- 11.1.4 any licence under which the Company has the right to run its telecommunications system and/or connect to the Services or supply any of the Services is revoked, amended or otherwise ceases to be valid; or
- 11.1.5 any maintenance or repair is necessary (for the purposes of new provision, updating facilities, general maintenance or otherwise) or required to the relevant network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, the Company may not be able to give any advance notice).
- 11.2 The Customer shall reimburse to the Company all reasonable costs and expenses incurred by the implementation of a suspension pursuant to conditions 11.1.1 and/or 11.1.3 and the recommencement of the provision of the Services as appropriate.

12 TERMINATION

- 12.1 Without prejudice to any other rights of the Customer or the Company under this Contract, either party shall be entitled at any time and for any reason whatsoever without any liability to the other to terminate this Contract on the giving of not less than 30 (thirty) days' written notice to the Customer, such notice not to expire prior to the end of any Minimum Term provided for in this Contract.
- 12.2 Without prejudice to condition 12.4, this Contract may be terminated immediately by either party by notice in writing to the other if the other party materially breaches its obligations under this Contract and in the case of breaches which are capable of remedy such party fails to remedy such breach within 30 (thirty) days of the written notice by the other party, provided that such notice contains details of what the breach is and requesting that the breach is remedied.

- 12.3 Notwithstanding anything to the contrary expressed or implied in these Conditions, either party (without prejudice to its own rights) may terminate this Contract immediately on notice in writing to the other party, in the event that:
- 12.3.1 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) any partner of the partnership is deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - 12.3.2 the other party commences or proposes to commence negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with its creditors; or
 - 12.3.3 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - 12.3.4 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - 12.3.5 a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - 12.3.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 (fourteen) days; or
 - 12.3.7 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12.3.1 to condition 12.3.6 (inclusive); or
 - 12.3.8 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.4 The Company shall be entitled to terminate this Contract immediately on notice in writing to the Customer in circumstances where it also has a right to suspend the provision of the Services pursuant to condition 11.1.1 to 11.1.4 (inclusive).
- 12.5 Without prejudice to any other right the Supplier may have, the Supplier may terminate any relevant part of this Contract and/or terminate any licence granted pursuant to condition 13.1 or condition 19.2 without terminating the whole Contract in the event of either (i) an irremediable breach by the Customer of condition 13 or 19 or (ii) following notice by the Company in writing of a breach by the Customer of condition 13 or 19 that is capable of remedy, the Customer fails to remedy the breach within 30 (thirty) days of the receipt of such notification.
- 12.6 The termination or expiry of this Contract shall be without prejudice to any rights or liabilities which have accrued prior to such expiry or termination. Any provision of these Conditions which expressly or by implication is intended to survive termination or expiry, shall survive the termination or expiry of this Contract.
- 12.7 Any implied right to terminate for convenience that the Customer may have under Relevant Law is hereby expressly excluded.

13 SOFTWARE

Company Software

- 13.1 Where the Company provides Company Software, the Company grants to the Customer a non-exclusive, non-transferable, royalty free, revocable licence for the Customer and the End Users to use the Company Software (and any connected documentation) solely for the Term, for the Customer's internal business purposes and for the purposes of this Contract. The Customer's use of any Company Software shall constitute the Customer's consent to the relevant licence terms contained within the relevant Company Software or otherwise notified to the Customer from time to time. If required by the Company, the Customer shall sign such separate licence agreement as may be reasonably required by the Company for the Customer to be licensed to use the Company Software.
- 13.2 Save as otherwise expressly provided for in this Contract, the licence under condition 13.1 for any Company Software is personal to the Customer and the Customer is only licensed to use the Company Software for the benefit of the Customer in accordance with the express terms of this Contract and not further or otherwise. Any licence for any Company Software shall terminate automatically upon the termination or expiry of this Contract.
- 13.3 The Software and the Software documentation and any Intellectual Property Rights of whatever nature therein shall remain the property of the Company or its licensors. The Customer acknowledges that it shall not acquire any right, title or interest in or to any Third Party Software other than the right to use such software under the applicable Contract.

Third Party Software

- 13.4 Where the Company provides Third Party Software, the Customer shall sign or otherwise consent to the relevant end user licence agreement as required by the Company or relevant Vendor to protect the Vendor's interest in the Third Party Software and for the Customer to be able to use the Third Party Software, including any such license terms that are embedded in any Third Party Software in a click through form or otherwise.
- 13.5 The Customer shall, and shall procure that any End Users shall, comply with all licence terms and conditions applicable to Third Party Software, including those which are embedded in any Third Party Software in a click through form or otherwise and those which are notified by Company or the Vendor to the Customer from time to time.
- 13.6 The Customer acknowledges that:
 - 13.6.1 its continued use of any Third Party Software is conditional on its compliance and its End Users' compliance with the licence terms and conditions applicable to such Third Party Software, as notified to the Customer by the Company or the Vendor, as set out in the applicable Contract; and/or as embedded in any Third Party Software in a click through form or otherwise; and
 - 13.6.2 it shall not acquire any right, title or interest in or to any Third Party Software other than the right to use such software under the applicable Contract.

General

- 13.7 The Customer shall notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Software (or connected documentation).
- 13.8 Except as permitted by Relevant Law or as expressly permitted under this Contract, the Customer shall not translate, adapt, disassemble, decompile, reverse engineer, modify, duplicate the functionality of, adapt, enhance or extend any Software (or any part of it) or copy the relevant manual or documentation (or any part of it) without the Company's prior written consent and will not distribute or disclose the Software to any third party other than as expressly permitted in this Contract.
- 13.9 The Customer shall not combine, merge or otherwise permit any Software (or any part of it) to become incorporated in any other software, application or program, nor arrange or create derivative works based on the Software.
- 13.10 The Customer shall not, copy the Software or connected documentation (or any part of it), except for permitted back-ups in accordance with the relevant licence terms, provided that the Customer keeps accurate and up-to-date records of such copying containing such information as the Company reasonably requests.
- 13.11 The Customer's use of the Software is limited to the number of access points set out in the Order Form and the Customer agrees that any attempt to use the Software by more than the specified number of End Uses shall constitute a material breach of this Contract and/or the relevant Vendor licence agreement.
- 13.12 The Customer shall, and shall procure that all End Users shall, comply with all Software licence terms and conditions, including those that are embedded in any Software in a click through form or otherwise.
- 13.13 The Customer acknowledges and accepts that the Company shall have no liability to the Customer in the event that an End User is unable to access any Software and/or Services due to failure to provide any necessary Customer Input Materials or the Customer's failure to agree to or to comply with any relevant license terms for Software.
- 13.14 The Customer shall not, distribute, license, sell or otherwise deal in or encumber the Software (or connected documentation).
- 13.15 The Customer shall not use the Software and/or Software documentation on behalf of or make it available to any third party or allow or permit a third party to do so, save as otherwise provide in and in accordance with the relevant licence terms.
- 13.16 The Customer shall effect and maintains adequate security measures to safeguard the Software from theft or unauthorised use.
- 13.17 The Customer shall not use the Software contrary to any restriction set out in this Contract or otherwise in a way that is not expressly permitted by this Contract. The Customer's right to use the Software and any connected documentation shall not include the rights of any third party to use or have access to the Software and any documentation and in any event, the Customer shall ensure that all such use does not exceed the Customer's permitted use in accordance with the relevant license terms.
- 13.18 The Customer's obligations and undertakings under this condition 13 and under any relevant licence terms shall survive termination of any Software licence and/or this Contract.

14 CALL MONITORING



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

15 CONFIDENTIALITY

- 15.1 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 this 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:
- 15.1.1 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 relevant Contract; or
 - 15.1.2 in the case of the Customer, its End Users to the extent that they are required to use or access the Service.
- 15.2 Information shall not be treated as confidential if it is:
- 15.2.1 lawfully in the public domain; or
 - 15.2.2 lawfully in the possession of the Customer or the Company before disclosure from the other has taken place; or
 - 15.2.3 obtained from a third person who is entitled to disclose it; or
 - 15.2.4 replicated independently by someone without access or knowledge of the information.
- 15.3 If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any information provided to the Customer by the Company in connection with the Contract the Customer will notify the Company immediately of the request and give the Company at least 10 (ten) Business Days to make representations before releasing the requested information (save to extent otherwise required by law).
- 15.4 Subject to condition 15.5, where a party who has disclosed confidential information so requests and following termination of the relevant Contract for whatever reason, each party who has received any confidential information of the other party shall without delay:
- 15.4.1 return to the other party, in a form capable of delivery, anything containing or recording the confidential information, whether in the form of documents, computer records, audio tapes, video tapes, disks or any other media; and
 - 15.4.2 certify in writing that any such confidential information not returned has been destroyed or made permanently unusable.
- 15.5 The Company shall not be required to return confidential information pursuant to condition 15.4 where continuing use or disclosure of such confidential information is necessary in order for the Company or any member of the Company's Group to exercise its rights or perform Services under the Contract or where the Company is required to maintain such confidential information pursuant to any Relevant Laws or for any other purpose specified in this Contract.
- 15.6 The Customer acknowledges that the [Software and] Pre-existing Materials are Confidential Information.

16 DATA PROTECTION

- 16.1 In this condition, unless the context otherwise requires, the following definitions shall apply:

"Data Client"	means in relation to any Protected Data which ever of; (i) the Customer or member of the Customer's Group; or (ii) any customer or end-customer of the Customer; (iii) is the Controller in relation to that Protected Data;
"Data Protection Laws"	means all applicable law relating to data protection, the processing of personal data and privacy, including without limitation: (i) the Data Protection Act 2018; (ii) the General Data Protection Regulation (EU) 2016/679; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and references to Controller, Processor, Data Subjects, Personal Data, Process, Processed, Processing, Processor and Supervisory Authority have the meanings set out in, and will be interpreted in accordance with, such Data Protection Laws;
"Data Protection Losses"	means all liabilities, including all: (i) reasonable costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and (ii) to the extent permitted by Relevant Laws, (a) administrative fines, penalties, sanctions, liabilities

	or other remedies imposed by a Supervisory Authority; (b) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (c) reasonable costs of compliance with investigations by a Supervisory Authority;
“Data Security Incident”	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Protected Data transmitted, stored or otherwise Processed;
“Data Subject Request”	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
“GDPR”	means the General Data Protection Regulation (EU) 2016/679;
“International Transfer”	means a transfer to a country outside the United Kingdom and/or the European Economic Area (as it is made up from time to time) of Protected Data which is undergoing Processing or which is intended to be Processed after transfer;
“Processing Instructions”	has the meaning given to that term in paragraph 16.3.1(a);
“Protected Data”	means Personal Data which has been passed to the Company and is required to be Processed under this Contract by the Company as a Processor; and
“Sub-Processor”	means any third party appointed by the Company to Process the Protected Data.

16.2 Processor and Controller

- 16.2.1 The parties acknowledge and agree that, for the Protected Data, the Customer (or the relevant Data Client) shall be the Controller and the Company shall be the Processor.
- 16.2.2 The Customer authorises the Company to Process the Protected Data during the term of this Contract as a Processor for the purpose set out in the Data Protection Annex to these Conditions.
- 16.2.3 The Company shall Process Protected Data in compliance with:
- (a) the obligations of Processors under Data Protection Laws in respect of the performance of its obligations under this Contract; and
 - (b) the terms of this Contract.
- 16.2.4 The Customer shall (and shall if the Customer is not the Controller ensure that the relevant Controller shall) comply with:
- (a) all Data Protection Laws in connection with the Processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Contract, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
 - (b) the terms of this Contract.
- 16.2.5 The Customer warrants to the Company that:
- (a) it has all necessary rights to authorise Company to Process Protected Data in accordance with this Contract and the Data Protection Laws;
 - (b) all data sourced by the Customer for use in connection with the Services, shall comply in all respects, including in terms of its collection, storage and Processing (which shall include the Customer providing all of the required fair processing notices and information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
 - (c) it will not send any Protected Data to the Company which is not necessary for the Company to provide the Services; and
 - (d) its instructions to the Company relating to Processing of Protected Data will not put the Company in breach of Data Protection Laws, including with regard to International Transfers.
- 16.2.6 If the Company reasonably considers that any instructions from the Customer relating to Processing of Protected Data may put the Company in breach of Data Protection Laws, the Company will be entitled not to carry out that Processing and will not be in breach of this Contract or otherwise liable to the Customer as a result of its failure to carry out that Processing.
- 16.2.7 The Customer shall remain fully liable for the acts or omissions of each Data Client as if they were its own.

16.3 Instructions and Details of Processing

- 16.3.1 Insofar as the Company Processes Protected Data on behalf of the Customer in connection with the provision of the Services to the Customer under this Contract, the Company:
- (a) unless required to do otherwise by Relevant Laws, shall (and shall ensure that any Sub-Processor shall) Process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this paragraph 16 and the Data Protection Annex to these Conditions (together the "**Processing Instructions**");
 - (b) shall, if Relevant Laws require it to process Protected Data other than in accordance with the Processing Instructions, notify the Customer of any such requirement before Processing the Protected Data (unless Relevant Laws prohibit such information on grounds of public interest); and
 - (c) promptly inform the Customer if the Company becomes aware of a Processing Instruction that, in the Company's opinion, infringes Data Protection Laws in the course of providing the Services, provided that:
 - (i) this shall be without prejudice to paragraphs 16.2.4 and 16.2.5; and
 - (ii) to the maximum extent permitted by law, the Company shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any Processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information under this condition (c).
- 16.3.2 The Processing of Protected Data to be carried out by the Company under this Contract as a Processor shall comprise the Processing set out in the Data Protection Annex to these Conditions, as may be updated from time to time as agreed in writing between the parties.
- 16.3.3 In respect of the Personal Data which the Company Processes as a Controller in connection with the Services (for example, in relation to Customer account management and billing), the Customer will:
- (a) provide reasonable assistance to the Company, including to provide fair processing notices to the relevant Data Subjects and obtaining consents if necessary, to enable the Company to comply with the Data Protection Laws;
 - (b) ensure that it is not subject to any prohibition or restriction which would:
 - (i) prevent or restrict it from disclosing or transferring the relevant Personal Data to the Company, as required under this Contract; or
 - (ii) prevent or restrict the Company from Processing the Personal Data as appropriate in connection with this Contract.

16.4 **Technical and Organisational Measures**

The Company shall implement and maintain, at its cost and expense, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

16.5 **Sub-Processors**

- 16.5.1 The Customer acknowledges and agrees that the Company may engage third-party Sub-Processors in connection with the provision of the Services. The Company has entered or will enter into a written agreement with each Sub-Processor containing data protection obligations not less protective than those in this Contract with respect to the protection of Protected Data to the extent applicable to the nature of the Services provided by each Sub-Processor.
- 16.5.2 The Company shall make available to the Customer the current list of Sub-Processors. The Company will inform the Customer of any proposed addition or replacement of a Sub-Processor thereby giving the Customer an opportunity to object (acting promptly, reasonably and in good faith towards the Company) to such changes. If the Customer does not provide any objections within 30 (thirty) days of the notice from the Company regarding the proposed changes to Sub-Processors, without limiting any of its rights or remedies under the Data Protection Laws, the Customer shall be deemed to have consented to such changes.
- 16.5.3 In the event that the Customer rejects any proposed addition or replacement of a Sub-Processor in accordance with paragraph 16.5.2, without prejudice to any other rights and remedies of the Company:
- (a) the Company shall not be liable to the Customer for any failure to perform or delay in the performance of its obligations under this Contract arising as a result of such rejection by the Customer of any proposed addition or replacement of a Sub-Processor; and

- (b) the Customer shall bear all costs incurred by the Company in the procurement of a suitable replacement Sub-Processor to replace the rejected Sub-Processor (if applicable).

16.5.4 If the Company appoints a Sub-Processor, the Company shall:

- (a) prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Protected Data, appoint such Sub-Processor under a written contract which imposes the same (in substance) terms to those imposed on the Company under this Contract that is enforceable by the Company; and
- (b) remain fully liable for the acts and omissions of each Sub-Processor as if they were its own.

16.5.5 The Company shall ensure that all persons authorised by it (or by any Sub-Processor) to Process Protected Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality (except where disclosure is required in accordance with Applicable Laws, in which case the Company shall, where practicable and not prohibited by Applicable Laws, notify the Customer of any such requirement before such disclosure).

16.6 Assistance with the Customer's Compliance and Data Subject Rights

16.6.1 The Company shall, to the extent permitted under Relevant Laws, promptly notify the Customer if it receives a Data Subject Request relating to the Protected Data, Services. Taking into account the nature of the Processing, the Company shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's (or the relevant Data Client's) obligation to respond to a Data Subject Request under Data Protection Laws, provided that if the number of Data Subject Requests exceeds 3 (three) per calendar month, the Customer shall pay the Company's charges calculated on a time and materials basis at the Company's then current prevailing rates for recording and referring the Data Subject Requests in accordance with this paragraph 16.6.

16.6.2 The Company shall provide such reasonable assistance to the Customer as the Customer reasonably requires (taking into account the nature of Processing and the information available to the Company) in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

- (a) complying with its obligations under the Data Protection Laws relating to the security of Processing Protected Data;
- (b) conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly (as such term is defined in Data Protection Laws);
- (c) responding to requests for exercising Data Subjects' rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;
- (d) prior consultation with a Supervisory Authority regarding high risk processing; and
- (e) notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Data Security Incident,

provided the Customer shall pay the Company's charges for providing the assistance in this paragraph 16.6.2, such charges to be calculated on a time and materials basis at the Company's then current prevailing rates.

16.7 International Data Transfers

The Company will only make an International Transfer if:

- 16.7.1 a competent authority or body of the United Kingdom or the European Commission (as applicable) makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;
- 16.7.2 the Company or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case the Customer will execute (and ensure the relevant Data Client(s) execute) any documents (including data transfer agreements) relating to that International Transfer which the Company or the relevant Sub-Processor requires it to execute from time to time; or
- 16.7.3 the Company or the relevant Sub-Processor is required to make the International Transfer to comply with Relevant Laws, in which case the Company will notify the Customer of such legal requirement prior to such International Transfer unless such Relevant Laws prohibit notice to the Customer on public interest grounds.

16.8 Records, Information and Audit

16.8.1 The Company shall maintain, in accordance with Data Protection Laws binding on the Company, written records of all categories of Processing activities carried out on behalf of the Customer.



16.8.2 The Company shall, in accordance with Data Protection Laws, upon prior written request make available to the Customer:

- (a) a summary of the Company's annual internal audit reports demonstrating the Company's compliance with its obligations as a Processor under Data Protection Laws; and
- (b) confirmation that the audit has not revealed any material vulnerability in the Company's systems, or to the extent that any such vulnerability was detected, that the Company has taken steps to remedy such vulnerability.

16.8.3 If the measures set out at paragraph 16.8.2 are not sufficient to confirm the Company's compliance with Data Protection Laws, the Company will allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) as is reasonably necessary to demonstrate the Company's compliance with its obligations under Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), subject to the Customer:

- (a) giving the Company reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
- (b) the parties mutually agreeing upon the scope, timing and duration of the audit;
- (c) ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Relevant Laws);
- (d) ensuring that such audit or inspection is undertaken during Normal Business Hours, with minimal disruption to the Company's business, the Sub-Processors' business and the business of other customers of the Company; and
- (e) paying the Company's reasonable charges for assisting with the provision of information and allowing for and contributing to inspections and audits.

16.9 Breach Notification and Compensation Claims

16.9.1 In respect of any Data Security Incident involving Protected Data the Company shall, without undue delay, notify the Customer of the Data Security Incident and provide the Customer with relevant details of the Data Security Incident and the Customer, if it is not the Controller, shall ensure it provides such notification to the relevant Controller without undue delay.

16.9.2 If a party receives a compensation claim from any person relating to Processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the claim shall:

- (a) make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
- (b) consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible for paying the compensation.

16.10 Deletion or Return of Protected Data and Copies

The Company shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such format as the Customer reasonably requests within a reasonable time after the earlier of:

16.10.1 the end of the provision of the relevant Services related to the Processing of Protected Data; or

16.10.2 once Processing by the Company of any Protected Data is no longer required for the purpose of the Company's performance of its relevant obligations under this Contract,

and delete existing copies (unless storage of any Protected Data is required by Relevant Laws and, if so, the Company shall inform the Customer of any such requirement).

17 CHANGES TO THESE CONDITIONS AND CONTRACT

17.1 The Company may change these at any time to comply with Relevant Laws or the direction of any regulatory authority and will publish any such change online at www.daisygroup.com (or at such other URL as is notified to the Customer by the Company from time to time) and/or by notice in writing to the Customer stating that these Conditions have changed and providing a link to the new Conditions and/or Service Specific Conditions, as soon as is reasonably practical in the circumstances prior to the changes taking effect.

17.2 Subject to condition 17.1 and without prejudice to any process for calling-off Services, agreeing to additional Services or agreeing to operational changes to Services, provided under the relevant Service Specific Conditions, or otherwise expressly

provided for under this Contract, no variation, supplement, deletion or replacement of or from this Contract or any of its terms shall be effective unless it is made in writing and is signed by or on behalf of each party.

- 17.3 The Company may, if requested by the Customer, from time to time provide additional services in accordance with the relevant Service Specific Conditions, such additional services shall be included within the Services.

18 FRAUD AND SECURITY

- 18.1 The Customer shall ensure that user names and passwords, log-in details and access codes used for the purposes of accessing or using the Services, equipment or any systems, network elements or equipment used by it and/or End Users in connection with the Services are kept secure and confidential at all times and are only used by authorised users. The Customer shall inform the Company immediately if the Customer knows or suspects that an End 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 Services.
- 18.2 In the event of any illegal, fraudulent or unauthorised use of the Services, the Company reserves the right (at the Company's sole discretion) to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer uses in connection with the Services.
- 18.3 The Customer accepts and acknowledges that the Services are not guaranteed to be secure and the Company does not guarantee the prevention or detection of any unauthorised attempts to access the Services.
- 18.4 Any assistance given by the Company in relation to fraudulent and/or unauthorised use by the Customer or third parties (or the prevention of such use) will be on a reasonable endeavours basis only and (subject to condition 6 (if applicable)) 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 unauthorised use by an employee of the Company acting in that capacity).
- 18.5 Save to the extent expressly provided as a Service by the Company under this Contract, the Customer remains at all times responsible for:
- 18.5.1 preventing unauthorised use of the Services; and
 - 18.5.2 maintaining the security of all systems, network elements and equipment within its (or its employees', agents' or contractors') control.
- 18.6 Without limitation, the Customer shall put in place and comply at all times with the following security measures:-
- 18.6.1 the Customer shall ensure that any password used in connection with the Services is strong and is made up of not less than eight characters which shall include at least one number, one letter and one alphanumerical symbol;
 - 18.6.2 the Customer shall regularly and at least every 6 (six) weeks change the password set out at condition 18.6.1 above;
 - 18.6.3 the Customer shall restrict access to passwords to key individuals;
 - 18.6.4 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
 - 18.6.5 the Customer shall, without delay, follow any security directions given to it by the Company from time to time.

19 INTELLECTUAL PROPERTY RIGHTS

- 19.1 As between the Customer, the Company and any member of the Company's Group, the Customer acknowledges that (i) all Intellectual Property Rights and all other rights in the Services, the Pre-existing Materials and the Software (other than the Third Party Software) are owned by and shall remain the property of the Company or the applicable member of the Company's Group or its supplier or licensors and (ii) the Third Party Software is and shall continue to be owned by the relevant Vendor. Unless expressly stated to the contrary in the Order Form, by reference to this condition 19.1, all Intellectual Property Rights developed by or on behalf of the Company or applicable member of the Company's Group during the performance of the Services shall vest in such entity absolutely.
- 19.2 Subject to condition 19.1, the Company hereby licenses the Customer to use the Pre-existing Materials on a non-exclusive, royalty-free, non-transferable basis to such extent as is necessary to enable the Customer to make use of the the Services in accordance with these Conditions and any applicable Contract. Without prejudice to condition 12.5, if this Contract (or a relevant part of this Contract) is terminated for whatever reason, this licence shall automatically terminate.
- 19.3 If and to the extent that the Company, any member of the Company's Group, any sub-contractor and/or Company Personnel are required to use any Customer Input Materials, Customer Information or equipment belonging to the Customer or any third party for the purposes of providing the Services, the Customer hereby grants to the Company, Company's Group, the relevant

sub-contractor and Company Personnel (or shall procure the grant to the Company of) a non-exclusive, royalty-free, non-transferable licence to use such Customer Input Materials and/or Customer Information and/or Customer equipment to the extent necessary to enable the Company Personnel to provide the Services in accordance with the terms of the applicable Contract. If the relevant Contract is terminated for whatever reason, this licence will automatically terminate.

- 19.4 Subject to conditions 19.5 to 19.7 (inclusive) and condition 19.9 the Company shall indemnify the Customer and keep the Customer indemnified against all losses, damages, reasonable costs or reasonable expenses and other liabilities (including reasonable legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of its use of the Services (excluding any Third Party Software) in accordance with these Conditions and the Contract.
- 19.5 If an injunction is granted as a result of a claim or action within the scope of condition 19.4 and that injunction prevents the Customer's use of the Software, the Company shall, if requested to do so by the Customer and at the Company's option and expense and provided that the Customer has complied with condition 19.9 and is not in breach of these Conditions either:
- 19.5.1 obtain for the Customer the right to continue using the Software in accordance with the Contract free from any liability for such infringement; or
 - 19.5.2 modify, substitute or replace the Software or any part of it so as to avoid the infringement, without materially adversely limiting the functionality of the Software; or
 - 19.5.3 refund to the Customer the part of the Charges that directly relates to the Software (or the part of it) which the Customer is unable to use as a result of the claim or action.
- 19.6 Conditions 19.4 and 19.5 shall not apply to the extent that any claim or action is caused or exacerbated by:
- 19.6.1 any modification to the Services made by any person other than the Company;
 - 19.6.2 any breach of this Contract by the Customer;
 - 19.6.3 any use of the Services which is made after commencement of the claim or action or (if earlier) the Customer or an End User becoming aware of the alleged infringement;
 - 19.6.4 use of the Services in combination with other hardware and software not supplied by the Company other than a combination with hardware or software stated in the applicable Contract as being compatible or otherwise approved by the Company as being necessary for the operation of, or use of the Services;
 - 19.6.5 information, data or programs furnished by the Customer in the course of the supply and maintenance of the Services or Software;
 - 19.6.6 actions taken by the Company at the request or on the instructions of the Customer;
 - 19.6.7 failure of the Customer or a user to use replaced or modified parts of the Services provided by the Company in order to avoid such infringement;
 - 19.6.8 use of the Services in a manner for which it was not designed;
 - 19.6.9 any use of the Services other than in accordance with the Company's instructions;
 - 19.6.10 any breach of Third Party Software licence terms by the Customer or any End User; or
 - 19.6.11 any Customer Input Materials or other Intellectual Property Rights made available to the Company by the Customer.
- 19.7 Subject to the provisions of condition 9 (Exclusion and Limitation of Liability), conditions 19.4 and 19.5 state the Company's entire liability arising from an infringement (or alleged infringement) of an Intellectual Property Right of a third party.
- 19.8 The Customer shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Customer Input Material in all cases before the date on which the Services are to start.
- 19.9 As a condition of the indemnity given by the Company at condition 19.4 the Customer shall:
- 19.9.1 notify the Company promptly of any related claims or legal proceedings or allegation which may give rise to a claim under the indemnity upon becoming aware of the same;
 - 19.9.2 make no admissions relating to any claims or legal proceedings or allegations without the consent of the Company, such consent not to be unreasonably withheld or delayed;
 - 19.9.3 not agree any settlement or compromise of such claims or legal proceedings nor make any payment on account of them without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed;
 - 19.9.4 allow the Company to conduct all negotiations and proceedings providing that the Company consults with the Customer and keeps the Customer informed with respect to a claim, legal proceedings or an allegation; and

19.9.5 give the Company all reasonable assistance to deal with the matter giving rise to a claim under the indemnity.

19.10 Without prejudice to any other rights of the Company, the Customer shall indemnify, keep indemnified and hold harmless the Company against all costs (including without limitation legal costs and the cost of enforcement (on a full indemnity basis)) liabilities, claims, damages, direct, indirect or consequential losses (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss whether such losses are direct, indirect or consequential losses), expenses and/or judgments whatsoever, which it may suffer or incur, and arising from any infringement by the Customer (including, its affiliates, directors, officers, agents, consultants and employees) of any third party's Intellectual Property Rights.

20 ANTI-BRIBERY

20.1 Each party shall, and shall use reasonable endeavours to procure that its officers, employees, agents and any other persons who perform the services for and on behalf of it in connection with this Contract, shall;

20.1.1 comply with all applicable Anti-Bribery Laws;

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

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

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

20.1.5 provide the other party with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

20.2 Each party shall promptly report to the other party any request or demand for any financial or other advantage of any kind received in connection with the performance of any Contract by it or by its officers, employees, agents or any other person who performs or receives (as applicable) the Services for or on behalf of it in connection with any Contract.

21 GENERAL

21.1 Failure to exercise or delay in exercising on the part of either party any right power or privilege of that party under any Contract shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right power or privilege in any circumstances preclude any other or further exercise thereof or the exercise of any other right power or privilege. Any waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of the applicable Contract.

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

21.3 The Customer shall refer any dispute it has with the Company to the Company's complaints procedure at www.daisygroup.com (or at such other URL as is notified to the Customer by the Company from time to time). Nothing in this condition shall prevent the Customer or the Company from exercising any rights and remedies that may be available in respect of any breach of the provisions of this Contract.

21.4 The parties (each acting reasonably) will attempt to resolve any dispute arising out of or relating to these Contract ("**Dispute**") through negotiations between the respective representatives of the parties having authority to settle the matter.

21.5 The parties shall use reasonable endeavours to resolve the Dispute using the following negotiation procedure:

21.5.1 where a Dispute first arises either party may serve notice on the other to commence the negotiation procedure;

21.5.2 on receipt of a notice under condition 21.5.1 the Company's service delivery manager and an authorised representative of the Customer shall meet to try and resolve the Dispute;

21.5.3 if the individuals referred to in condition 21.5.2 are unable to resolve the Dispute within 10 (ten) Business Days the Dispute shall be escalated to a director or other appropriate senior executive as nominated by either party;

21.5.4 following escalation of the Dispute to the executives referred to in condition 21.5.3, the executives shall meet as soon as practicable to try to resolve the Dispute.

21.6 Nothing in condition 21.5 shall prevent the Customer or the Company from exercising any rights and remedies that may be available at law (including injunctive relief) in respect of any breach of the provisions of these Conditions or any Contract.

- 21.7 This 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.
- 21.8 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 postal address or email address, given in an Order Form (or such other postal address, email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by email 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 email, at the time of sending, 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 21.8 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 sent by email, to an email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 21.9 Any director or representative of the Customer who signs this Contract and any Change on behalf of the Customer will be deemed an authorised signatory and thereby the Company shall be entitled to rely on such signatory as binding the Customer to the obligations in this Contract in all respects.
- 21.10 The Customer shall not, without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.
- 21.11 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 this Contract without the consent of the Customer provided that the Company remains responsible for the acts and omissions of such subcontractors in their performance of the Company's obligations under the applicable Contract.
- 21.12 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 21.13 Neither party shall, without the prior written consent of the other party, at any time from the Effective Date to the expiry of 6 (six) months after the termination or expiry of the relevant Contract, actively solicit or entice away from the other party, or actively employ or attempt to employ (save where the relevant person has responded to a general advertisement for the relevant job vacancy), any person who is, or has been, engaged as an employee or sub-contractor of the other party who was directly associated with the performance or receipt of the Services under any Contract. Any consent given by a party in accordance with this condition 21.13 shall be subject to the other party paying a sum equivalent to twenty per cent of the then current annual remuneration of the relevant employee or sub-contractor or, if higher, twenty per cent of the annual remuneration to be paid by that party to that employee or sub-contractor.
- 21.14 If any provision (or part of a provision) of this 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.
- 21.15 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.
- 21.16 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).
- 21.17 Except with the prior written consent of the other party, neither party shall:
- 21.17.1 make any public statement about the Services or otherwise publicise this Contract or any information relating to it; or
- 21.17.2 use any trademarks or identifying logos owned or licensed to any member of the other party in any manner.
- 21.18 Nothing in this 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 venture partner. Except, and to the extent, that this 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.
- 21.19 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 this Contract.
- 21.20 This Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter. Without prejudice to conditions 3.1 and 3.2 and save in the event of fraud or fraudulent misrepresentation, neither party has entered into this Contract in reliance upon and nor shall they have any remedy in respect



of, any representation or statement, illustrations, samples or descriptive material (whether made by the other party or any other person) which is not expressly set out in the Contract.

21.21 This 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.