

Daisy Terms and Conditions for Broadband Services For Business and Residential Customers

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Definitions

"Acceptable Use Policy (AUP)" means the policy referring to the use of daisy broadband products which can be found at www.DAISYPLC.COM/HOME/LEGAL/terms_and_conditions.HTML

"Agreement" means this agreement entered into between Daisy and the Customer in respect of the Service, commencing on the Commencement Date

"Authorisation" means the authorisation granted to pursuant to the Communications Act 2003 that authorises to Network Operator to run a public communications network

"Business Customer" any customer Daisy makes this Agreement with in respect of with where the Service is to be provided to a place of business for business purposes. It includes a person who Daisy reasonably believes is acting with the Customer's authority or knowledge

"Charges" means all sums (plus VAT) payable by the Customer to Daisy in respect of the Service including but not limited to the connection charge (in respect of the Customer being connected to the Network) and any other charges for any other services provided by Daisy as identified in the Pricing List

"Commencement Date" means the date of the telephone call concluded between Daisy and the Customer where the Customer requested the Service

"Customer" means the customer Daisy makes this Agreement with. It includes a person who Daisy reasonably believes is acting with the Customer's authority or knowledge

"Early Termination Charges" means the charges (plus VAT) for early termination calculated pursuant to clause 18.6

"Equipment" means equipment that is not part of the Network and which the Customer uses or intends to use with the Service

"Fault" means the continuous total loss of the ability to make or to receive Calls or the continuous total loss of a related service

"Line" means a connection to the Network

"Main Telephone Socket" means the point where the Equipment is connected to the Network which is called the Network Termination Point in the Authorisation

"Minimum Term" means the period of 12 months as notified to the Customer by Daisy on entering into this Agreement and in the Notification Letter

"Network" means the fixed line telecommunications network operated by the Network Operator

"Network Operator" means the network operator who operates a network to which the Line is connected in accordance with an agreement between the Network Operator and Daisy

"Notification Letter" means the statutory transfer letter sent by Daisy to the Customer regarding the Customer's transfer to Daisy, such letter to include details of the Switchover Date

"Daisy" means Daisy Communications Ltd (Company number 04145329) whose registered office is Daisy House, Suite 1, Lindred Road Business Park, Nelson, Lancashire, BB9 5SR.

"Parties" means Daisy and the Customer and references to "Party" shall be construed accordingly

"Premises" means the place where the Service is or will be provided, usually the Customer's place of business unless agreed otherwise

"Price List" means the price list as set out on the Website as varied by Daisy from time to time

"Relevant Standards" means the standards designated under Section 22 of the Telecommunications Act 1984 as amended by the Communications Act 2003

"Residential Customer" means any Customer Daisy makes this Agreement with where the Service is to be provided to a place of residence for non-business purposes. It includes a person who Daisy reasonably believes is acting with the Customer's authority or knowledge

"Service" means all or part of the Service explained in clause 1 and any related services listed in the Price List that Daisy agrees to provide to the Customer under this Agreement and "Services" shall be construed accordingly

"Service Guarantee" means the guarantee set out in clause 24

"Service Provider" means any Public Electronic Communications Network Provider as defined in the Communications Act 2003

"Switchover Date" means the date of transfer of the Service to Daisy as notified to the Customer in the Notification Letter

"Subsequent Terms" Periods of 12 months following each anniversary unless the agreement is terminated by giving due notice

"Website" means the website www.daisycommunications.co.uk

1. What the Service is

- 1.1 The Service Daisy supplies to the Customer is the provision of high speed "always on" network access to the internet provided in accordance with the particular type of Broadband Plan chosen by the Customer and supplied to the Customer's Premises via the Customer's nominated fixed telephone line and which is provided in accordance with the terms of the contract;
- 1.2 The Service does not include any modems or other equipment that Daisy may supply to the Customer under a separate agreement. In providing the Service, Daisy will endeavour to use the reasonable skill and care of a competent telecommunications service provider.
- 1.3 Daisy can only provide Services in areas of the United Kingdom in which Daisy are technically able to offer broadband services from time to time.
- 1.4 Broadband speeds depend on a number of factors including distance from the exchange, local availability and line test. Daisy cannot guarantee that your line will produce top speeds of up to 8Mb as the final speed is governed by factors that are beyond our reasonable control.

2. Things Daisy may have to do

From time to time Daisy may have to:

- (a) change the code(s) or number(s) or the technical specification of the Service due to mandatory changes imposed on Daisy; or
- (b) interrupt the Service for operational or emergency reasons; although Daisy will restore the interrupted Service as quickly as possible; or
- (c) give the Customer instructions that Daisy believe are necessary for health or safety reasons, or to maintain the quality of the Service that Daisy supplies to the Customer or to other customers.

3. Phone number

- 3.1 The Customer may not sell or agree to transfer the code(s) or number(s) provided to it for use with the Service.

4. Call Monitoring

Daisy may occasionally monitor and record calls made to or by Daisy by or to the Customer, for training purposes, to improve the quality of its customer services and to assist with complaint handling.

5. Use of the Customer's information

- 5.1 Daisy complies with its obligations under the Data Protection Act 1998 ("the Act"). Daisy will only use any Personal Data (as defined within the Act) obtained from the Customer as a result of providing the Service for the purposes of administering the Customer's account and notifying the Customer of changes to the Service, enabling Daisy or its third party suppliers to supply the Service to the Customer and for invoicing purposes.

- 5.2 Daisy will not pass Personal Data obtained from the Customer to any third parties for marketing purposes but may send the Customer information about Daisy's own products and services which it considers may be of interest to the Customer, unless the Customer requests Daisy not to do so.

- 5.3 If the Customer or a user does not want its details, or, in the case of the Customer those details of its users to be used in this way then the Customer should contact the Daisy Data Controller at Daisy House, Suite 1, Lindred Road Business Park, Nelson, Lancashire, BB9 5SR.

- 5.4 The Customer agrees that Daisy may search the files of credit reference agencies which will keep a record of that search. Daisy may also carry out identity and anti-fraud checks with fraud prevention agencies. If the Customer gives Daisy false or inaccurate information and Daisy suspects fraud, Daisy will record this. Details of how the Customer conducts their account may also be disclosed to those agencies. The information may be used by Daisy and other parties in assessing applications for and making decisions about credit, credit related services and insurance (including motor, household credit, life and other insurances and claims) from the Customer and members of the Customer's household and for debt tracing, debt recovery, credit management and crime, fraud and money laundering detection and prevention. Information may be used by Daisy and other parties for checking the Customer's identity, statistical analysis about credit, insurance, fraud and to manage the Customer's account and insurance policies. Daisy may also perform subsequent searches for the purpose of risk assessment, debt collection and fraud prevention with one or more credit reference agencies and/or fraud prevention agencies whilst the Customer retains a financial obligation to Daisy.

- 5.5 Information held about the Customer by credit reference agencies may be linked to records relating to the Customer's financial associate(s). For the purposes of this application the Customer declares that the Customer and the Customer's financial associate(s) are financially independent and the Customer requests that their application be assessed without reference to any "associated" records, although the Customer recognises that this may adversely affect the outcome of their application. The Customer believes that there is no information relating to their financial associates that is likely to affect Daisy's willingness to offer the Services to them. The Customer authorise Daisy to check the validity of this declaration with credit reference agencies and if Daisy discover any associated records, which would affect the accuracy of this declaration Daisy may suspend the Service or terminate this Agreement with immediate effect. For the purpose of this clause, a "financial associate" is someone with whom the Customer has a financial link, for example, a spouse, partner or family member.

- 5.6 The Customer authorises Daisy to use and disclose, in the UK and abroad, information about them and their use of the Services and how they conduct their account for the purposes of operating their account and providing the Customer with the Services or as required for reasons of national security or under law to our associated companies, partners or agents, any telecommunications company, debt collection agency or credit reference agency and fraud prevention agency or governmental agency and other users of these agencies who may use this information for the same purpose as Daisy. The Customer agrees to this information being used by Daisy for credit control purpose and fraud and crime detection and prevention. The Customer can obtain further details from our public registration held by the Information Commissioner. If the Customer wishes to have details of the credit reference or the fraud prevention agencies from whom Daisy obtains and with whom Daisy records information about the Customer or receive a copy (Daisy may charge a fee) of the information Daisy holds about the Customer, please contact Daisy by writing to the Data Controller at Daisy at the address detailed in clause 20, stating the Customer's full name, address, account number and phone number.

- 5.7 The Customer also agrees to the information described in paragraph 5.6 being used, analysed and assessed by Daisy and the other parties identified in paragraph 5.6 and selected third parties for marketing purposes including amongst other things to identify and offer the Customer by phone, post, the Network the Customer's phone, email, text (SMS), media messaging or other means, any further products, services and offers which Daisy thinks might interest the Customer. If the Customer does not wish their details to be used for marketing purposes, please write to the Data Controller at Daisy at the address detailed in clause 5.3, stating the Customer's full name, address, account number and phone number.

6. When Daisy will provide the Service

- 6.1 Daisy will use all reasonable endeavours to provide the Service by the date agreed with the Customer such date being the date informed to the Customer in the Notification Letter.

- 6.2 Daisy will use the reasonable skill and care of a competent telecommunications service provider to provide the Service however, Daisy cannot guarantee that the Service will always be Fault free as other third party companies may provide the Network.

7. Duration of this Agreement

- 7.1 This Agreement will come into force on the date on which the Customer orders the Service. The Service is supplied by Daisy subject to a Minimum Term unless this Agreement is otherwise terminated prior to expiry of the Minimum Term in accordance

with its terms. The Minimum Term will commence on the Switchover Date.

7.2 Upon expiry of the Minimum Term, or any anniversary thereafter, this Agreement will renew automatically for further periods of 12 months ("Subsequent Terms") unless terminated by either Party in accordance with the terms of this Agreement.

8. Repairing faults

8.1 If there is a Fault, the Customer must report this directly to Daisy.

8.2 If the Customer reports a Fault, Daisy will report the Fault to the Network Operator as soon as reasonably practicable so that the Network Operator can arrange for an engineer to attend to the Fault as soon as possible.

8.3 Daisy will not be responsible for any Faults arising from fixed lines and/or Personal Computers.

8.4 Modem Support: Daisy offers technical support on all modems purchased under a separate agreement with Daisy and in accordance with those terms and conditions. If the Customer chooses to use their own modem Daisy may have to refer the Customer back to their supplier for technical advice.

9. Use of the Services

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

9.2 Daisy do not warrant or guarantee the accuracy or completeness of any of the information, sound, software and any other materials (in whatever form) and services made available to the Customer as part of the Services (the "Content") or any further information or results which may be derived from it. The Customer acknowledges that it will not rely on any Content in making any business or other decision and that the Customer uses of the Content is at its sole risk.

9.3 Please note that there may be additional conditions (either Daisy's or those of a third party) displayed on line relating to particular Content. These conditions will also form part of this Agreement should the Customer access such Content.

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

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

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

9.7 The Customer must not use the Services:

9.7.1 in a way that breaches any legislation or any licence applicable to the Customer or that is in any way unlawful or fraudulent; or

9.7.2 to deliver, knowingly receive, upload, download, use or re-use any information or material which is abusive, defamatory, obscene or menacing, or in breach of any copyright, privacy or any other rights; or

9.7.3 to send or procure the sending of any unsolicited advertising or promotional material; or

9.7.4 in a way that does not comply with our specific instructions.

9.8 The Customer will fully indemnify Daisy against any actual or potential claims or legal proceedings against Daisy by a third party because of the Customer's use of the Services in breach of the provisions of this clause 10. Daisy shall notify the Customer of any such claims or proceedings and inform the Customer regularly as to the progress of such claims or proceedings.

9.9 The Customer acknowledges that the Services are provided to other users and Daisy owes a duty to these users as a whole to preserve our network integrity and avoid network degradation. If, in Daisy's reasonable opinion, Daisy believes that the Customer's use of the Services has or may adversely affect such Network integrity or may cause Network degradation Daisy may change the Customer's chosen access rate or manage the Customer's Services as Daisy sees fit in the circumstances.

9.10 To prevent spam from entering and affecting the operation of Daisy's systems and the Service, Daisy may take any reasonable measures or actions necessary to block access to, or delivery of, any e-mail which appears to be of an unsolicited nature and / or part of a bulk e-mail transmission. Daisy may also use virus screening technology that may result in the deletion or alteration of e-mail and or e-mail attachments. Daisy gives no warranties whatsoever that such technology will be effective in any way, including against unsolicited emails or against any virus, worm, Trojan horse or other program or device that is apparently intended to access and modify, delete or damage data file(s) or computer program(s).

9.11 To enable customers to have a better understanding of what is and is not acceptable when using broadband products, and to help them get the best out of the internet, Daisy has developed a number of Acceptable Usage Policies (AUP) relating to broadband internet services. Complying with these AUPs is a contractual requirement and will ensure that the product is used only for its intended purpose.

9.12 Daisy's AUPs are based on current "best internet industry practice" and draw on the collective experience of users and service providers across the internet community.

9.13 Daisy may change the AUPs at any time by publishing the changes on its website (www.daisyplc.com) 14 days before the change is to take effect.

10. Access and Security

10.1 The Customer will at all reasonable times, provide Daisy's employees and agents, and anyone acting on Daisy's behalf producing a valid identity card, with access to the Location. Daisy will normally only require access during normal working hours but may, require the Customer to provide access at other times, on reasonable notice.

10.2 Daisy's employees and agents will observe the Customer's reasonable premises regulations, as previously notified to Daisy in writing. The Customer will provide a suitable and safe working environment for Daisy's employees and those of any third parties who assist Daisy in providing the Services to the Customer.

10.3 The Customer will use its reasonable endeavours to provide personnel, resources and any other information as Daisy reasonably require, assisting Daisy in the provision of the Services to the Customer.

11. User names and Passwords

11.1 The Customer must ensure that user names and passwords used in connection with the Services are kept confidential and are only used by authorised users. The Customer must inform Daisy immediately if the Customer knows or suspects that a user name or password has been disclosed to an unauthorised user or is being used in an unauthorised way. The Customer must not change or attempt to change a user name without Daisy's written consent.

11.2 Daisy reserves the right (at Daisy's sole discretion):

11.2.1 to suspend user names and password access to the Services if at any time Daisy think that there has been or is likely to be a breach of security; and

11.2.2 to ask the Customer to change any or all of the passwords the Customer's uses in connection with the Services.

11.3 The Customer must inform Daisy immediately of any subsequent changes to the information the Customer supply to us.

11.4 The Customer accepts and acknowledges that the Services, as other internet applications, is not secure and Daisy do not guarantee the prevention or detection of any unauthorised attempts to access the Services.

12. Intellectual Property Rights

12.1 The Customer warrants that it is the owner of, or that it is authorised by the owner of, any trade mark or name that the Customer wishes to use as its registered Domain Names ("Domain Names") and use as part of the Customer's uniform resource locator ("URL").

12.2 If Daisy undertakes Domain Names and URL registration on behalf of the Customer, the Customer will reimburse Daisy for any registration fees paid by Daisy to the internet registration authorities. Daisy do not guarantee that any Domain Names or URL requested by the Customer will be available.

12.3 Daisy may require the Customer to select a replacement Domain Names or URL and may either refuse to provide or may suspend the Services if Daisy reasonably believes that the Domain Names or URL is, or is likely to be, offensive, abusive, defamatory or obscene or in breach of the provisions of Clause 5.7.

12.4 Any patents, design rights, know-how, copyrights, trade marks, the right to use software and all other similar proprietary rights (whether registered or unregistered) worldwide ("Intellectual Property Rights") relating to the Services or arising during the development of the Services, belong to Daisy or to a relevant third party.

12.5 The Content is protected by copyright, trademark and other Intellectual Property Rights, as applicable. The Customer must not and must not permit anyone else to copy, store, modify, distribute externally, broadcast or publish any part of the Content, and the Content may only be used for the Customer's own purposes.

13. Software

13.1 Where Daisy provide software to the Customer to enable the Customer to use the Services ("Software"), Daisy grant the Customer a non-exclusive, non-transferable licence to use the Software solely for the term and purposes of the Agreement. The Customer may need to sign agreements reasonably required by the owner of the copyright in the Software to protect the owner's interest in that Software for the Customer to be able to use the Software.

13.2 Except as permitted by applicable law or as expressly permitted under this Agreement the Customer cannot de-compile or modify the Software, or copy the manuals or documentation.

13.3 Daisy may offer updates or modifications to the Software or documentation and Daisy will notify the Customer of any applicable charges for such updates or modifications at the time Daisy offer them to the Customer.

14. Paying Daisy's charges for the Service

14.1 The Customer agrees to pay all of the Charges due in respect of the Service as set out in the Price List.

14.2 Daisy will send the Customer the first bill shortly after beginning to provide the Services. Daisy may send the Customer a further bill monthly in advance, but Daisy may also send the Customer a bill at anytime. Daisy will send bills to the address the address requested provided by the Customer. Daisy also reserve the right to issue bills by e-mailing these bills to the Customer every month (although Daisy reserve the right to send the Customer a bill by e-mail at any time).

14.3 If the Customer does not pay an invoice within 14 calendar days of the date of that invoice, Daisy will send the Customer a reminder. If Daisy does not receive payment of that invoice within 7 calendar days of the date of that reminder, Daisy may charge the Customer daily interest on the overdue amount(s) at a rate equal to 4% above the base lending rate of HSBC Bank plc for the period beginning on the date on which payment is due and ending on the date on which payment is made.

14.4.1 Charges are payable by Direct Debit, unless agreed otherwise with Daisy. If a Customer cancels an active Direct Debit without Daisy's consent, administrative charges, as set out in the Price List, may apply.

14.4.2 The Customer must pay all Charges in accordance with their direct debit authority, or if, for some reason, their direct debit payment fails, in accordance with the time for payment detailed in the invoice. The Customer must pay all deposits when Daisy asks for them.

14.4.3 If the Customer's payment is rejected, or becomes, or is, invalid or unavailable, thereby preventing Daisy from recovering the sums due under the Customer's account within 4 days following the due date for payment, Daisy reserves the right immediately to withdraw access to the Services. The Customer will also be charged an administration fee as detailed in the Price List.

14.4.4 In these circumstances, the Customer will be sent a letter giving them 10 days in which to arrange for their account to be discharged in full.

14.4.5 If, in response to Daisy's letter, the Customer provides Daisy with valid payment details so as to enable Daisy to collect the sums due on their account, Daisy will re-apply for payment. If the Customer's proposed payment method is still rejected, invalid or unavailable, or if the Customer's account remains outstanding for any other reason, 18 days after the original due date for payment, then (i) the Customer will be charged a further administration fee (as detailed in the Price List) together with a fee

- for the submission of a further warning letter (again as detailed in the Price List), and (ii) a letter will be sent to the Customer requesting the discharge of the Customer's account in full, and/or for appropriate arrangements to be made with Daisy for the Customer's account to be discharged, which must be effected within 7 days from the date of the letter, failing which Daisy reserves the right to refer the Customer's outstanding account to Daisy's credit control department.
- 14.4.6 If the Customer's account remains unpaid for a period of 25 days after the original due date for payment a security deposit of three times the average monthly invoice or payment in full for the first year will be required before Daisy reinstates the Services.
- 14.4.7 If the Customer's account remains unpaid for a period of 32 days after the original due date for payment, the Services will then be terminated and the Customer's account will be referred to Daisy's credit control department for it to take the appropriate action to collect the outstanding sums.
- 14.4.8 If Daisy are required to instruct their solicitors or other professional advisers to collect any outstanding sums on the Customer's account, the Customer will be responsible for, and Daisy will look to the Customer to discharge, those costs that are incurred by Daisy in taking such action.
- 14.4.9 The Customer must ensure that the account holder's name is the same as the name on the payment details that are provided.
- 14.5 Daisy may amend the Charges at any time. Daisy will publish details on their Website at least 14 days before the change is to take effect. In respect of a Residential Customer, Daisy will notify the Customer in writing at least 14 days before any increase in the Charges takes place. If the Customer does not accept the proposed increase in the Charges, the Customer must notify Daisy within 14 days of publications on the Website or receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed increase.
- 14.6 If due to an error on Daisy's part a customer is found to have been involved excess charges for any service, Daisy will refund by credit any valid claim for such excess charge subject to a maximum in any case of the equivalent of three months excess.
- 15. The Customer's obligations**
- 15.1 In order to use the Broadband Services, the Customer needs an existing telephone line and a personal computer of a minimum specification. The Customer must also ensure that compatible cables and extension leads are used to and from their telephone socket, modem and PC in order to use the Service. The Customer acknowledges that Daisy are dependent upon certain third parties to install and provide the Services to the Customer. The Customer also acknowledges that there may be technical limits that prevent Daisy from delivering an operational service to the Customer. Daisy will endeavour to provide the Services to the Customer at the access rate the Customer chooses but, due to congestion within the Network, the speed of service may be reduced at times.
- 15.2 The Customer may only connect (directly or indirectly) modems, phones, extension wiring, sockets or other equipment to the Network in a manner technically compatible with the Services, that does not breach any relevant legislation or telecommunications industry standards and by using a Main Telephone Socket that Daisy or the Network Operator have fitted unless the Parties agree otherwise.
- 15.3 The Equipment must only be used with the Network in a way that meets the Relevant Standards, is technically compatible with the Service and complies with the terms under which Daisy or the Network Operator was granted Authorisation. If the Equipment does not meet the Relevant Standards, the Customer must immediately disconnect it, or allow Daisy to do so at the Customer's expense. If the Customer asks Daisy to test the Equipment to make sure that it meets the Relevant Standards, the Customer must pay Daisy the applicable charges as set out in the Price List.
- 15.4 Daisy may have to place equipment on the Premises to provide the Service. Daisy requires a suitable place and safe conditions for this equipment. If Daisy has to supply equipment that needs a continuous mains electricity supply and connection points, the Customer is responsible for providing this at its own expense.
- 15.4 The Customer must prepare the Premises for any installation of the Service to be carried out by Daisy prior to Daisy's arrival according to any reasonable instructions that Daisy may give to the Customer. When the work is completed, Daisy will not be responsible for putting back items that have had to be moved by Daisy to allow it to carry out any necessary work nor for any re-decorating to the Premises required.
- 15.5 The Customer is responsible for obtaining all relevant permissions for Daisy to carry out any work necessary to provide the Service at the Premises.
- 15.6 If Daisy's or the Network Operator's engineers have to enter the Premises they will show their identity cards. Daisy will comply with reasonable health and safety requirements notified to Daisy at the Premises and the Customer shall comply with Daisy's reasonable instructions to ensure a safe place for its engineers to carry out the work.
- 15.7 Nobody must tamper with Daisy's equipment that is on the Premises. Other than fair wear and tear, if there is any damage to or loss of Daisy's equipment (unless caused by Daisy), the Customer must pay the charge in the Price List for any necessary repair or replacement.
- 15.8 The Customer must ensure the Service is not used:
- (a) to an offensive, menacing, indecent, or nuisance manner;
- (b) fraudulently or in connection with any criminal offence;
- In the event that the Customer uses the Service in breach of this clause 15.8, Daisy reserves the right to suspend the Service pursuant to clause 19. The Customer will fully reimburse Daisy in respect of any sums Daisy is obliged to pay to any third party, and any other costs incurred by Daisy (including without limitation properly incurred legal fees), as a result of the Customer's misuse of the Services in breach of this clause 15.8.
- 15.9 The Customer must inform Daisy if they are moving the Premises so that Daisy can arrange the transfer of the Customer's line. If Daisy are requested to move the line Daisy will also, unless otherwise requested, endeavour to retain the Customer's existing telephone number. If Daisy can transfer the Customer's existing number to the new Premises the existing Agreement will continue under the same terms and conditions provided always that Daisy reserve the right to charge a moving fee as detailed in the Price List. If Daisy cannot transfer the Customer's existing number to the new Premises, installation of a new line will be required at the new Premises, line, or if the Customer requires any additional new lines, this will attract new line connection charges and a new Agreement for a minimum term of 12 months.
- 15.10 If the Customer currently receives services from an alternative supplier the Customer is responsible for any contractual agreement the Customer has with them and any liabilities the Customer may incur for terminating the Customer's current agreement.
- 15.11 The Customer is solely responsible for ensuring that the installation and use of the Service shall not affect any alarm system at its Premises.
- 15.12 The Customer remains responsible for all rental charges made by the Customer's line rental provider relating to the Customer's telephone line (together with any repair and maintenance charges (unless caused by our negligence) and all call charges from the Customer's fixed line telephony service provider.
- 15.13 If the Customer is migrating to the Service from a third party provider of an alternative broadband service, the Customer will need to obtain a Migration Authorisation Code ("MAC") from that service provider. This MAC will be valid for thirty (30) days from the date of issue and can only be used once. It is the Customer's responsibility to obtain this code and to ensure that the Customer provides it to Daisy in sufficient time to process the Customer's migration. Daisy will not be responsible for any delay, costs, expenses, loss or damage arising or incurred by the Customer through failure to connect the Customer to the Service.
- 16. Liability**
- 16.1 Daisy's liability under this Agreement for a failure in provision of the Service or the Service itself is detailed in this clause 16.
- 16.2 Daisy does not exclude or limit its liability for death or personal injury resulting from its negligence, or for fraud.
- 16.3 Subject to clause 16.2, Daisy shall not be liable to the Customer for any indirect, special or consequential loss arising under this Agreement, including but not limited to loss of profit, business or revenue, loss of anticipated savings, wasted management time or any other loss, damage cost or expense arising out of any breach of this Agreement by Daisy which was not reasonably foreseeable.
- 16.4 Daisy cannot guarantee that the Service will operate Fault free as other third party companies may provide the Network. This is beyond Daisy's reasonable control and Daisy are not therefore liable for Faults due to these matters. However, Daisy accepts liability, as follows, subject to the limitations in clauses 16.3, 16.6 and 16.7: -
- (a) in respect of its failure to report a Fault which has been notified to Daisy by the Customer, to the Network Operator as soon as reasonably practicable; or
- (b) for any actual loss or damage suffered by the Customer which was reasonably foreseeable.
- For the avoidance of doubt Daisy shall not be liable for any delay in the repair of the Fault except to the extent that Daisy delays or fails to report the fault (as notified to Daisy by the Customer under clause 8) to the Network Operator as soon as reasonably practicable.
- 16.5 Daisy excludes all liability of any kind in respect of:
- 16.5.1 Customer Information, Third Party Content, Content and any other material on the internet which can be accessed using the Services and Daisy are not responsible in any way for any goods (including software) or services provided by third parties advertised, sold or otherwise made available by means of the Services or on the internet;
- 16.5.2 the accuracy, completeness or suitability for any purpose of any Content; and
- 16.5.3 the acts or omissions of other providers of telecommunications or internet services (including Domain Name registration authorities) or for faults in or failures of their equipment; and
- 16.5.4 any temporary loss of the Customer's telephone line upon activation of the Service may cause.
- 16.5.5 loss of service caused by delay in connection for any reason and does not warrant that any connection ordered will be simultaneous to any other service provided
- 16.6 Subject to clauses 16.2 and 16.3 above, Daisy's total liability to the Customer (in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss or damage howsoever arising is limited to a total of £6,000 for each line affected and subject to an overall total of £25,000 per event or series of events.
- 16.7 Unless clause 16.2 applies, Daisy's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Agreement is limited to £1million in any 12 month period.
- 16.8 Except as set out expressly in this Agreement, all conditions, warranties, undertakings and obligations implied by statute, common law, custom, trade, usage or otherwise are excluded to the extent permissible in law.
- 16.9 Nothing in this clause 16 will exclude liability, which one Party would otherwise have to the other Party in respect of any statements made fraudulently.
- 16.10 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 16.11 Daisy does not accept liability for the acts or omissions of other providers of telecommunication services (including for the avoidance of doubt the Network Operator) unless such other providers have been specifically engaged by Daisy as subcontractors or assignees in respect of performing Daisy's obligations under this Agreement.
- 16.12 The Customer acknowledges that in providing the Services Daisy are not engaging in "investment business" (as defined in the Financial Services Act 1986 (FSA)) nor is any Content intended to be an "investment advertisement" for FSA purposes.
- 16.13 The Customer fully indemnifies and hold Daisy harmless against all claims and proceedings arising from infringement of any third party's Intellectual Property Rights by reason of the Customer's use or publication of the Customer Information, the Content or Third Party Content.
- 16.14 If due to an error on Daisy's part a customer is found to have been invoiced excess charges for any service, Daisy will refund by credit any valid claim for such excess charge subject to a maximum in any case of the equivalent of three months excess.
- 17. Force Majeure**
- 17.1 Daisy will not be liable for failure to comply with its obligations as set out in this Agreement due to matters beyond its reasonable control including but not limited to lightning, flood, or exceptionally severe weather, fire or explosion, terrorism, civil disorder, riot, war, or military operations, national or local emergency, anything done

by government or other competent authority or industrial disputes of any kind or in respect of any acts or omissions of Ofcom or any other Public Electronic Communications Network Providers as defined in the Communications Act 2003.

18. Termination of this Agreement

- 18.1 Daisy or the Customer may terminate this Agreement at any time upon giving the other one month's prior written notice of its intention to terminate this Agreement.
- 18.2 The Customer may terminate this Agreement by written notice to Daisy, if Daisy is in material breach of its terms and fails to remedy such breach within 30 days of receiving notice from the Customer requiring such breach to be remedied; or if the Customer does not accept any proposed increase in the Charges notified to it by Daisy pursuant to clause 14.5, provided that the Customer notifies Daisy of its intention to terminate this Agreement within 14 days of receiving notification of the proposed increase pursuant to clause 14.5.
- 18.3 If a Residential Customer is a new customer or an existing customer who has entered into this Agreement over the telephone, the Residential Customer may cancel this Agreement up to 10 working days after the date the Notification Letter was sent to the Residential Customer. The Residential Customer will be refunded the price of all Charges (excluding Call Charges) incurred from the date the Notification Letter. The Customer must pay for all Call Charges including any international Call Charges which may take longer to be billed. This does not affect the Customer's statutory rights.
- 18.4 This Agreement may be cancelled by a Business Customer at any time prior to the Switchover Date on giving written notice to Daisy or contacting Daisy's customer services. Daisy will inform the Customer of the Switchover Date by issuing a Notification Letter to the Customer.
- 18.5 In the event that the Customer terminates this Agreement prior to expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clauses 18.2, 18.3 and 18.4, the Customer shall pay the Early Termination Charges, calculated in accordance with clause 18.6.
- 18.6 The Early Termination Charges shall be, for each line that a Customer cancels: -
- (a) the sum of the Charges payable by the Customer from the date of actual termination until the date of expiry of the Minimum Term; and
 - (b) an administration charge of £50.00 (Fifty pounds) plus VAT.
- 18.8 In the event that Daisy terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by Daisy pursuant to clauses 19(d), or 19(e), the Customer shall pay the Charges up to the end of the notice period.
- 18.9 In the event that the Customer terminates this Agreement after the expiry of the Minimum Term, other than in respect of termination by the Customer pursuant to clause 18.2, the Customer shall pay the Charges up to the end of the notice period in accordance with clause 18.1 or until 30 days from the date the notice is received by Daisy whichever is the later.
- 18.10 If this Agreement ends, Daisy will refund any money owed to the Customer, after first deducting any money the Customer owes to Daisy under this Agreement or any other agreement Daisy has with the Customer.

19. Suspension or termination of the Service for breach

- 19.1 Daisy reserves the right to suspend the Service or terminate this Agreement immediately at any time without giving the Customer prior notice, and without prejudice to Daisy's other rights and remedies, if:
- (a) the Customer breaches this Agreement or any other agreement it has with Daisy for telephone, including payphone, telex or private service and fails to remedy the breach within 14 days of Daisy notifying the Customer of such breach and requesting that such breach is remedied;
 - (b) Daisy believes that the Service is being used in breach of clauses 9, 11, 12, & 15.8 whether the Customer is aware of such misuse or not;
 - (c) the Customer, being an individual, partnership or firm has entered into any composition or arrangement with its creditors, has a petition presented by it or by any other person for its bankruptcy or has a bankruptcy order made against it; or, being a company, is subject to any winding up or administration proceedings, or in any event ceases, or threatens to cease to trade;
 - (d) Daisy's Authorisation (or the authorisation of any relevant third party telecommunications supplier or regulator) expires or is revoked or modified in any respect which materially or adversely affects Daisy's ability to provide the Services to the Customer; or
 - (e) if Daisy have to do so to comply with any order, instruction or request of any authorised government body or authority or any emergency service; or
 - (f) Daisy are directed by any competent authority to cease the provision of the Services or any part of it; or
 - (g) any direct debit details submitted by the Customer for payment are found not to be or cease to be valid; or
 - (h) the Customer's contract with Daisy or the Customer's telecomm provider for its direct analogue exchange line is terminated; or
 - (i) Daisy's contract with any third party who assists Daisy in providing the Services to the Customer is terminated; or
 - (j) Daisy becomes aware of any breach of third party Intellectual Property Rights caused by the Customer Information or the Third Party Content.

If Daisy suspends the Services in accordance with this clause 19.1, Daisy may, at any time following such suspension (and if the circumstance in Clause 19.1 remains) immediately terminate the Agreement.

- 19.2 If the Customer does not pay an invoice in accordance with clause 14.3, Daisy reserves the right to suspend the Service and will lift the suspension following full payment being made by the Customer to Daisy.
- 19.3 If Daisy suspends the Service pursuant to this clause 19 (other than pursuant to clauses 19.1(d) and (e)), Daisy will not be obliged to recommence provision of the Service until the Customer does what it is obliged to do under and in accordance with the terms of this Agreement or satisfies Daisy that the Service will not be used in a way that is in breach of this Agreement.
- 19.4 The Customer is still liable to pay the Charges applicable to any period of suspension of the Service (other than in respect of a suspension pursuant to clauses 19.1 (d) or (e)).

- 19.5 In the event the Service is suspended by Daisy for reasons as set out in clause 19.1 (c) above, Daisy reserves the right to charge the Customer an administration fee of £50 payable by the Customer within 14 days of the Service being suspended by Daisy.
- 19.6 In the event the Service is recommenced, Daisy reserves the right to charge a reconnection fee of £25 plus VAT per affected line.
- 19.7 Daisy may suspend the Services including during scheduled periods of downtime where necessary for operational reasons such as repair, maintenance or improvement of the Services or because of an emergency. Daisy will restore the Services as soon as it reasonably can after suspension.

20. Validity

If any provision of this Agreement becomes invalid or unenforceable, the other provisions of this Agreement shall not be affected by such invalidity or unenforceability.

21. Disputes

- 21.1 If the Customer has a complaint or query regarding any aspect of the Service, the Customer should contact Daisy's customer services or write to Daisy at the address given in clause 26.
- 21.2 If Daisy cannot resolve any dispute with the Customer after a 12 week period, either Party can refer the dispute to the Telecoms Ombudsman at www.otelo.org.uk or on 08450501614 or to Ofcom, the communications regulator at www.ofcom.org.uk or call Ofcom on 0845 456 3000 for resolution.
- 21.3 Nothing in this clause 21 will prevent either Party from:
- (a) seeking injunctive relief in the case of any breach or threatened breach by the other Party;
 - (b) commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
 - (c) commencing proceedings in the case of non-payment of the Charges.

22. Changing this Agreement

- 22.1 If the Customer asks Daisy to make any change or changes to the Service Daisy may ask the Customer to confirm its request in writing. If Daisy agrees to a change, this Agreement will be changed when Daisy confirms the change to the Customer in writing.
- 22.2 Daisy can change the conditions of this Agreement including its Charges at any time. Daisy will publish any change in its major offices and on the Website at least 2 weeks before it takes place. In respect of a Residential Customer, Daisy will notify the Customer in writing at least 14 days before the Charges takes place.

23. Assignment

- 23.1 The Customer cannot assign or try to assign this Agreement or any part of it to a third party without Daisy's prior written consent.

24. Service Guarantee

- 24.1 Daisy Guarantees :
- (a) to provide the Service by the date agreed with the Customer as described in clause 6.1;
 - (b) to report a Fault in line to the Network Operator as soon as reasonably practicable;
 - (c) not to disconnect the Service by mistake; and
 - (d) to keep any appointment Daisy makes with the Customer under this Agreement.

25. Codes of Practice

In response to Ofcom's publication of its "Statement and Notification on Protecting Citizen's and Consumers from Mis-selling of Fixed-Line Telecoms Services" (the Ofcom Guidelines") which require all providers of fixed-line voice telephony services to maintain and follow a sales and marketing, and dispute resolution codes of practice in relation to Customer service, Daisy have produced a Sales and Marketing Code of Practice (incorporating the Dispute Resolution Code of Practice) to protect the Customer's rights in this area and a full copy of this is available on the Website.

26. Notices

Any notice given under this Agreement must be delivered by hand, sent by email or sent by prepaid post as follows:

- (a) to Daisy at Daisy House, Suite 1, Lindred Road Business Park, Nelson, Lancashire, BB9 5SR or such other address as may be notified to the Customer; or
- (b) to the Customer at the address the Customer has asked Daisy to send invoices to.

27. Entire Agreement Clause

- 27.1 This Agreement constitutes the entire agreement between Daisy and the Customer and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the Services.
- 27.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

28. Third Party Rights

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

29. Waiver

The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

30. Law and Jurisdiction

This Agreement or any term of this Agreement will be governed by English law and the English courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.