

Daisy Mobile Terms and Conditions for Mobile Telephone Services For Business Customers (monthly tariff)

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Definitions

"Accessories" includes all wires, chargers, batteries, memory cards, cords, headphones, software, styl, cases, headphones, hands free sets, Bluetooth kits etc. provided with Equipment and/or Additional Equipment by Daisy to the Customer.

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

"Additional Equipment" means any such additional equipment as is listed in the Price List and as may be Ordered by the Customer at any time during the Service Period

"Additional Service" means any such additional services as are listed in the Price List and as may be Ordered by the Customer at any time during the Service Period

"AIT" means Artificially Inflated Traffic and occurs where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls, which would be expected, from good faith commercial practice and usage of the network.

"Affiliate" means any company that is an Associated Company of either party as the term Associated Company is defined under section 416 of the Income and Corporation Taxes Act 1988. "Agreement" means these terms, and any amendments to these terms agreed with the Customer and any Supplemental Agreement.

"Airtime" means wireless airtime and network capacity procured from the Network Operator.

"Annual Minimum Call Spend" means the annual sum of money the Customer agrees with Daisy that the Customer will be the Customer's minimum spend on Call Charges during each year beginning on the Commencement Date or any anniversary thereof during the Services Period

"Call" means a signal, message or communication that is silent, spoken or visual on each line that Daisy agrees to provide to the Customer under this Agreement

"Call Level" means the sum of money the Customer agrees with Daisy which the Customer expects to spend on Call Charges during the period covered by the Customer's invoices and which Daisy agrees is acceptable further to undertaking any credit check it wishes to undertake

"Call Charges" means the sum of money (plus VAT) which is payable to Daisy by the Customer per Call

"Charges" means the prices and tariffs for Mobile Services (plus VAT) as set out in the Price List (plus VAT) payable to Daisy by the Customer in accordance with clause 9.1.

"Commencement Date" means the date upon which Services are first provided to the Customer pursuant to this Agreement.

"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

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

"Device" means the wireless device, or Equipment incorporating a SIM Card.

"Early Termination Fee" means the charges (plus VAT) for early termination calculated pursuant to clause 13.5

"Equipment" means the items supplied by Daisy to the Customer under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this Agreement.

"End-User Licensed Software" means any software, the licence terms for which are governed by a separate agreement with the licensor of such software typically by means of a "click-wrap" or "shrink-wrap" licence agreement.

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

"GPRS Bearer" means the General Packet Radio Service provided by the Network Operator, which forms part of the Airtime.

"GSM Gateway" means a device (not designed or adapted to be capable of being used whilst in motion) for wireless telegraphy designed or adapted to be connected by wireless telegraphy to the Daisy wireless telecommunications network or the wireless telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the Daisy wireless telecommunications network or the wireless telecommunications system of another network operator.

"Minimum Term" means the term of [12] [18] [24] months from the Commencement Date as notified to the Customer by Daisy on entering into this Agreement.

"Mobile Services" means the Equipment, Service and any Additional Equipment and/or Additional Service, which are provided by Daisy to the Customer during the Services Period in accordance with this Agreement

"Network Operator" means the network operator who operates the wireless network or networks to which the SIM Cards are connected.

"Numbers" means the numbers allocated to Daisy by the Network Operator and in turn allocated by Daisy to SIM Cards.

"Phone Box" means any kiosk, booth, acoustic hood, shelter or similar structure in which a phone is installed for the provision of telephone services to the public

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

"Order" means a request by the Customer for Additional Equipment or Additional Service or a change or variation in respect of the same (but not a disconnection) and **"Ordered"** shall be construed accordingly

"Service Period" means the period commencing on the Commencement Date during which period the Services are provided by Daisy to the Customer pursuant to this Agreement.

"Service Provider" means Avant UK Ltd.

"Service" means the provision by Daisy to the Customer of Airtime, GPRS Bearer, Mobile Extension, Mobile Web, SMS, SMS Land to Mobile Text Messaging Service and/or any other

services that Daisy may from time to time provide, and "Services" shall be construed accordingly.

"SIM Card" means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to the Customer by Daisy, and which contains the Number.

"SMS" means the short message service, which enables text messages to be sent to, and received from Devices.

"SMS Land to Mobile Text Messaging Service" means the short message service, for text messages sent to SIM Cards via a software application in conjunction with a private or virtual private circuit linking the Customer's wireless private or virtual private data network with the Mobile Services.

"Software" means any software (excluding End-User Licensed Software) supplied to the Customer by Daisy, the Network Operator or any other supplier under the terms of or in respect of this Agreement.

"Value Added Service" means the value added service such as installations, insurance, field services, repair etc. as may be made available by Daisy to the Customer on a non-discriminating basis and details of which appear on the Price List.

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

1. Provision of the Mobile Services

1.1 Daisy agrees to provide the Customer with the Mobile Services under the terms and conditions contained in this Agreement, and in consideration of the Charges specified in the Price List, and Daisy undertakes to use reasonable endeavours to provide the Mobile Services as soon as reasonably practicable and if possible by the requested dates for delivery/commencement.

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

2. Things Daisy may have to do

From time to time Daisy may have to:

2.1 change the code or telephone number or the technical specification of the Service due to mandatory changes imposed on Daisy; or

2.2 interrupt or suspend the Mobile Services for operational or emergency reasons; although Daisy will restore the interrupted Service as quickly as possible; or

2.3 give the Customer instructions that Daisy believe are necessary for health or safety reasons, or to maintain the quality of the Mobile Services that Daisy supplies to the Customer or to other customers; or

2.4 disconnect a SIM Card in any of the following circumstances without prejudice to its rights hereunder, provided that it shall use reasonable endeavours to restore the Mobile Services and reconnect the SIM Card as soon as reasonably practicable:

2.4.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Mobile Services are provided; and/or

2.4.2 reserves the right to add to, substitute, or to discontinue any item of Equipment at any time. Daisy does not guarantee the continuing availability of any particular item of Equipment; and/or

2.4.3 because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Network Operator) or for the Customer's own security.

2.5 suspend any SIM Card from making calls (other than to the emergency services) and disconnect any SIM Card from the Mobile Services if Daisy has reasonable cause to suspect fraudulent use of the SIM Card or the Device, or either are identified as being stolen.

2.6 During any period of suspension or disconnection arising from the circumstances detailed in clauses 2.2, 2.4 and 2.5 the Customer shall remain liable for all Charges levied in accordance with this Agreement.

3. Phone number

3.1 The Customer may not sell or agree to transfer the Number provided to it for use with the Service.

3.2 The Customer must ensure that the phone number for the Mobile Services is not advertised in or on a Phone Box without Daisy's prior written consent. If this happens, Daisy will be able to suspend the Mobile Services pursuant to clause 14.

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. Coverage

5.1 The Customer acknowledges that the provision of Airtime is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference.

6. Use of the Customer's information

6.1 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 Mobile Services 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.

6.2 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.

6.3 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.

- 6.4 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 us false or inaccurate information and we suspect 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.
- 6.5 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 you declare 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 Mobile 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 we 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.
- 6.6 The Customer authorises Daisy to use and disclose, in the UK and abroad, information about them and their use of the Mobile Services and how they conduct their account for the purposes of operating their account and providing the Customer with the Mobile 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 us by writing to the Data Controller at Daisy at the address detailed in clause 20, stating your full name, address, account number and mobile phone number.
- 6.7 The Customer also agree to the information described in paragraph 6.5 being used, analysed and assessed by Daisy and the other parties identified in paragraph 6.6 and selected third parties for marketing purposes including amongst other things to identify and offer the Customer by phone, post, the Network your Mobile Phone, email, text (SMS), media messaging or other means, any further products, services and offers which we think might interest you. 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 20, stating your full name, address, account number and mobile phone number.
- 6.8 Some Mobile Services or services provided by third parties may require the disclosure of information about the location of the Customer's mobile phone. If the Customer does not wish this to be disclosed, please contact 1300. Please note Daisy may pass information about the location of the Customer's mobile phone to emergency services.
- 7. Duration of this Agreement**
- 7.1 This Agreement will come into force on the date on which the Commencement Date. The Mobile Services are 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 Commencement 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. Equipment and Additional Equipment**
- 8.1 Daisy will provide the Equipment and/or the Additional Equipment to the Customer pursuant to clause 1.1 and acceptance of the Equipment and/or Additional Equipment by the Customer shall take place when the Customer takes delivery or possession of the Equipment and/or Additional Equipment. Risk in the Equipment and/or Additional Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the Equipment and/or Additional Equipment is delivered to the delivery location specified in the Order unless the damage is caused by the negligence of Daisy.
- 8.2 When Equipment and/or Additional Equipment is provided to the Customer then notwithstanding delivery and acceptance of the Equipment and/or Additional Equipment, title in the Equipment and/or Additional Equipment shall not pass to the Customer.
- 8.3 The Customer shall have the right to return the Equipment and/or the Additional Equipment within 14 days of receipt and the Customer will either be issued with a credit note or will not be invoiced for the Equipment and/or Additional Equipment provided always that the returned Equipment and/or Additional Equipment shall be in a satisfactory and/or re-usable condition (for example, shall not have scratches, cracks, liquid contamination, missing components or any other fault or defect) and must be accompanied by all Accessories & the original, undamaged outer packaging.
- 8.4 In the event that the Equipment and/or Additional Equipment, is returned in an unsatisfactory and/or defective condition (as shall be determined at Daisy's sole reasonable discretion) which would render it incapable of being repaired so that it may be re-sold to another customer or in such condition that would render any repair futile, Daisy reserves the right to charge the Customer for the full replacement value of the Equipment and/or Additional Equipment
- 8.5 In the event that the Customer returns the Equipment and/or Additional Equipment:
- 8.5.1 without all Accessories & the original, undamaged outer packaging; and/or
- 8.5.2 in an unsatisfactory and/or defective condition (as shall be determined at Daisy's sole reasonable discretion) which would render it beyond repair and/or resale,
- Daisy reserves the right to charge the Customer a re-stocking fee of a minimum of 20% of the full handset price.
- 8.6 Following any upgrade of Equipment and/or Additional Equipment or disconnection of Equipment and/or Additional Equipment from the Mobile Services, Daisy reserves the right to require by notice in writing the safe return of such Equipment and/or Additional Equipment from the Customer to Daisy at the Customers expense.
- 8.7 In the event that the Equipment and/or Additional Equipment, is not returned within one month of Daisy's written notification in accordance with clause 8.6 and/or is destroyed by the Customer, Daisy reserves the right to charge the Customer for the full replacement value of the Equipment and/or Additional Equipment.
- 8.8 Upon receipt of goods by a Customer or any representative of, if a product shortfall, alleged defect or discrepancy is identified then Daisy must be notified within 2 business working days of receipt otherwise a claim for product shortfall will not be valid.
- 8.9 Daisy reserves the right to add to, substitute, or to discontinue any item of Equipment and/or Additional Equipment at any time. Daisy does not guarantee the continuing availability of any particular item of Equipment and/or Additional Equipment.
- 8.10 Daisy warrants that each item of Equipment and Additional Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months (but in the case of Software 90 days) from the date on which each item of Equipment and Additional Equipment is despatched to the Customer by Daisy (the "Warranty Period") unless special conditions associated with certain Equipment and Additional Equipment apply.
- 8.11 Within the Warranty Period, if the Customer notifies Daisy of any defect or fault in the Equipment and/or Additional Equipment in consequence of which it fails to conform in all material respects in accordance with the manufacturer's specification (the "Faulty Equipment") Daisy shall, at Daisy's option, do one of the following: repair the Faulty Equipment; or replace the Faulty Equipment with the same or an equivalent item which may be a new or refurbished item; or refund the Charges in respect of the Faulty Equipment. In the event that Daisy replaces the Faulty Equipment, the replacement will be provided with its own Warranty Period, which shall last for the greater of: a) 3 months from the date on which the replacement is despatched to the Customer; or b) the outstanding period of the original Warranty Period.
- 8.12 The obligations set out in clause 8.10 shall not apply in the event that any defect or fault does not result from: fair wear and tear; or the Customer, or anyone acting with the authority of the Customer, has amended or damaged the Equipment and/or Additional Equipment, or used it for a purpose or in a context, other than in accordance with Daisy's or the manufacturer's instructions and advice.
- 8.13 Daisy reserve the right to charge carriage in circumstances where the Customer refuses to accept delivery of goods supplied by Daisy in response to a duly authorised order received from the Customer.
- 9. Paying Daisy's Charges for the Mobile Services**
- 9.1 The Customer agrees to pay all of the Charges due in respect of the Mobile Services as set out in the Price List in full without any deduction or set off.
- 9.2 The Customer is responsible for all Call Charges incurred as a result of use of the Mobile Services by the Customer or any third party using the Mobile Services.
- 9.3 Daisy will calculate the Call Charges using the details recorded at the telephone exchange. Call Charges will normally be invoiced monthly in arrears. Where possible, Call Charges will appear on the Customer's next invoice, but sometimes there may be a delay. The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.
- 9.4 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 a 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.
- 9.5 Daisy reserves the right to issue the Customer with an interim invoice if the Customer has exceeded its Call Level. Daisy may also ask the Customer to pay a deposit at any time, as security for payment of future invoices.
- 9.6 Daisy will issue the first invoice to the address provided by the Customer shortly after it provides the Mobile Services.
- 9.6.1 Direct Debit payment for Airtime and Line Rental Charges will be compulsory unless agreed otherwise with Daisy.
- 9.6.2 Direct Debit payments will be collected within 14 days of the invoice date unless with agreed exception
- 9.6.3 Charges for non-Direct Debit will be £2.50 + VAT per handset per mpnth until a Direct Debit form is fully completed and received by Daisy.
- 9.6.4 Should the Direct Debit fail, and it is deemed to be the Customers responsibility, a charge of £2 + 2% of the invoices value will be charged
- 9.6.5 A 4% surcharge, based on invoice value, is charged for any credit card payment
- 9.6.6 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.
- 9.6.7 If the Customer's payment is rejected, or becomes, or is, invalid or unavailable, thereby preventing us from recovering the sums due under your 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.
- 9.6.8 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.
- 9.6.9 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 you 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 we reserve the right to refer your outstanding account to Daisy's credit control department.
- 9.6.10 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 we reinstate the Services.
- 9.6.11 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.
- 9.6.12 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.
- 9.6.13 The Customer must ensure that the account holder's name is the same as the name on the payment details that are provided.
- 9.7 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. Daisy will also 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 receipt of the notice of the proposed increase, otherwise the Customer will be deemed to have accepted the proposed increase.
- 9.8 If the Customer has agreed to an Annual Minimum Call Spend (as notified to the Customer by Daisy on entering into this Agreement), and at the end of any given year (beginning on the Commencement Date or any anniversary thereof), the Customer has not incurred the Annual Minimum Call Spend, or if the Customer terminates this Agreement other than in respect of termination by the Customer pursuant to clause 14.2, prior to the end of any given year (beginning on the Cancellation Date or any anniversary thereof), the Customer will be liable to pay 20 % of the difference between the Charges incurred during that year and the Annual Minimum Call Spend.
- 9.9 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.
- 10. The Customer's obligations**
- 10.1 The Customer agrees not to use SMS or the SMS Land to Mobile Text Messaging Service for the purpose of marketing or advertising anything to users of wireless services without the consent of those users.
- 10.2 The Customer agrees that in respect of SMS, Daisy is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customers' SIM Cards, which do not originate from Daisy.
- 10.3 The Customer agrees that in using the Mobile Services:
- 10.3.1 Daisy is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent by the Customer using the Mobile Services ; and
- 10.3.2 the Customer must ensure that the Mobile Services are not used or permit to be used:
- (a) fraudulently or in connection with a criminal offence; or
- (b) for the purpose of sending unsolicited text messages; or
- (c) to send any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax in breach of any person's intellectual property rights or rights of privacy or is otherwise unlawful; or
- (d) to cause annoyance, inconvenience or needless anxiety; or
- (e) other than in accordance with the acceptable use policies of any connected telecommunications networks.
- 10.4 In the event that the Customer uses the Mobile Services in breach of this clause 10.4, Daisy reserves the right to suspend the Mobile Services pursuant to clause 14. 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 Mobile Services in breach of this clause 10.4.
- 10.5 The Customer undertakes with Daisy that throughout the Service Period it will use its reasonable endeavours to:
- 10.5.1 provide Daisy with such information as Daisy reasonably requests in connection with this Agreement; and
- 10.5.2 not use the SIM Card and/or Devices and/the Mobile Services for any purpose other than that for which it was designed or intended; and
- 10.5.3 notify Daisy immediately (and to confirm in writing) on becoming aware that any Device or SIM Card has been lost or stolen or that any person is making improper or illegal use of the Device, SIM Card or the Mobile Services. The Customer will be responsible for any Charges incurred as a result of unauthorised use of any Device, or SIM Card, or the information contained within a SIM Card, until Daisy has received a request from the Customer to suspend the Mobile Services to that Device or SIM Card.
- 10.6 The Customer undertakes with Daisy that throughout the Service Period it will and will take all reasonable steps to ensure that its employees will:
- 10.6.1 pay the standard charges levied by Daisy from time to time applicable to repair work on Equipment and/or Additional Equipment which is outside (in scope or time) the warranty provided under this Agreement; and
- 10.6.2 use the Equipment and/or Additional Equipment and any Software (including any End-User Licensed Software) in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of Daisy and not to copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by law.
- 10.6.3 not use the Mobile Services in any way to generate AIT;
- 10.6.4 not, without the prior written consent of Daisy which may be withheld at Daisy's absolute discretion, establish, install or use a GSM Gateway so that telecommunication services are provided via the GSM Gateway to third parties; and
- 10.6.5 not use the Mobile Services in a manner which is inconsistent with a reasonable customers good faith use of the Mobile Services.
- 10.7 The Customer may establish, install or use a GSM Gateway for its own private purposes only, provided that it adheres at all times to Daisy's policies in respect of the use of private GSM Gateways
- 10.8 The Customer agrees that it is procuring the SIM Cards and Mobile Services solely for its own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the SIM Card or the Mobile Services.
- 10.9 The Customer recognises that the Mobile Services may be dependent upon End-User Licensed Software and if the Customer does not accept the licence terms relating to any End-User Licensed Software, Daisy shall have no liability whatsoever for any failure to provide the Mobile Services to the Customer where the Mobile Services depend on the use of End-User Licensed Software.
- 10.10 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.
- 10.11 In the event that a Device and/or other Equipment or Software is damaged, destroyed, lost or stolen then the Customer agrees to pay the applicable replacement or repair charges as set out from time to time in the Price List and shall be liable to Daisy in respect of any charges, losses or expenses associated with such damage, destruction, loss or theft.
- 10.12 In the event that the Customer is subject to a claim in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment (and/or Additional Equipment) or Software then Daisy will indemnify the Customer in relation to such claim provided that the Customer promptly notifies Daisy of such claim, makes no admission in respect of such claim, allows Daisy to conduct all negotiations and proceedings (providing Daisy with all reasonable assistance) and allows Daisy at Daisy's own discretion and expense to modify or replace the Equipment (and/or Additional Equipment) or Software so as to avoid any continuing infringement. This indemnity does not apply to any infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment (and/or Additional Equipment) or Software in conjunction with other equipment and software not supplied by Daisy pursuant to this Agreement in which event the Customer shall indemnify Daisy in respect of any claims, proceedings and expenses arising from any such infringement by the Customer.
- 10.13 The terms of this Agreement shall also apply to any Orders placed by any Customer Affiliate. The Customer agrees that it will be liable to Daisy for: all claims, losses and expenses arising out of the breach of the terms of this Agreement by any of its Affiliates (including but not limited to the non-payment by the Affiliate of Charges and Early Termination Fee, which the Customer agrees to pay in full within 30 days of notice from Daisy of the amount outstanding) related to an Affiliate's use of the Mobile Services; ensuring that its Affiliates are aware of and comply with the terms of this Agreement; and, all losses, costs and expenses resulting from any claims against Daisy made by any of its Affiliates or any other third party whom the Customer has permitted to use or procure the Equipment or the Mobile Services, to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Agreement.
- 10.14 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. 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, the, 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] [18] [24] months.
- 10.15 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.
- 11. Liability**
- 11.1 Daisy's liability under this Agreement for a failure in provision of the Mobile Services are detailed in this clause 11.
- 11.2 Daisy does not exclude or limit its liability for death or personal injury resulting from its negligence, for breach of any implied term as to title or quiet enjoyment arising out of section 12 Sale of Goods Act 1979; or for fraud.
- 11.3 Subject to clause 11.2, 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.
- 11.4 Daisy cannot guarantee that the Mobile Services will operate Fault free as other third party companies may provide the Airtime. 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 11.3, 11.5 and 11.6 for any actual loss or damage suffered by the Customer, which was reasonably foreseeable or unforeseeable.
- 11.5 Subject to clauses 11.2 and 11.3 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.
- 11.6 Unless clause 11.2 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.
- 11.7 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.
- 11.8 Nothing in this clause 11 will exclude liability that one Party would otherwise have to the other Party in respect of any statements made fraudulently or in respect of any liability that cannot be excluded or restricted by law.
- 11.9 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.
- 11.10 Daisy does not accept liability for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by Daisy as subcontractors or assignees in respect of performing Daisy's obligations under this Agreement.

12. Force Majeure

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.

13. Termination of this Agreement

13.1 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.

13.2 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 9.7, 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 9.7.

13.3 If the Customer is a new customer or an existing customer who has purchased Additional Equipment and/or Additional Services over the telephone, the Customer may cancel this Agreement up to 10 working days after the Commencement Date (the "Trial Period") as long as the Customer returns (using Daisy's returns procedure, (call Daisy's customer services for more details, or otherwise at the Customer's cost)) in accordance with clause 8 within the Trial Period. The Customer will be refunded the price of all Charges (excluding Call Charges) incurred from the Commencement Date. The Customer must pay for all Call Charges including any international and roaming Call Charges that may take longer to be billed. This does not affect your statutory rights.

13.4 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 clause 13.2 or 13.3, the Customer shall pay the Early Termination Charges, calculated in accordance with clause 13.5, for the remainder of the Minimum Term.

13.5 The Early Termination Charges shall be, for each line that a Customer cancels:-

- the sum of the Line Rental Charges payable by the Customer from the date of actual termination until the date of expiry of the Minimum Term; and
- any actual Call Charges accrued up to and including the date of termination; and
- an administration charge of £50.00 (fifty pounds) plus VAT.

13.6 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 14(d), or 14(e), the Customer shall pay the Charges up to the end of the notice period.

13.7 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 13.2, the Customer shall pay the Charges up to the end of the notice period in accordance with clause 13.1 or until 30 days from the date the notice is received by Daisy whichever is the later.

13.8 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.

13.9 Upon the expiry of any termination notice or otherwise upon the termination of this Agreement Daisy will disconnect all SIM Cards, (and any other Equipment and/or Additional Equipment) from the Mobile Services.

14. Suspension or termination of the Service for breach

14.1 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:

- the Customer breaches this Agreement or any other agreement it has with Daisy and fails to remedy the breach within 14 days of Daisy notifying the Customer of such breach and requesting that such breach is remedied;
- Daisy believes that the Service is being used in breach of clauses 3.2 or 10.3, whether the Customer is aware of such misuse or not;
- 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;
- 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
- 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
- the Customer allows to be done anything which in Daisy's reasonable opinion may have the effect of jeopardising the operation of the Mobile Services, or the Mobile Services are being used in a manner prejudicial to the interest of the Customer and/or Daisy; or
- any direct debit details submitted by the Customer for payment are found not to be or cease to be valid; or
- Daisy are directed by any competent authority to cease the provision of the Services or any part of it; or
- Daisy's contract with any third party who assists Daisy in providing the Services to the Customer is terminated.

14.2 If the Customer does not pay an invoice in accordance with clause 9.4, Daisy reserves the right to suspend the Service initially with outgoing call bars, followed by incoming call bars if required (but not in relation to emergency number access) and will lift the suspension following full payment being made by the Customer to Daisy.

14.3 If Daisy suspends the Service pursuant to this clause 14 (other than pursuant to clauses 14.1(a) 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.

14.4 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 14.1 (d) or (e)).

14.5 In the event the Service is suspended by Daisy for reasons as set out in clause 14.1 (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.

14.6 In the event the Service is recommenced, Daisy reserves the right to charge a reconnection fee of £25 plus VAT per affected line.

15. 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.

16. Disputes

16.1 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 20.

16.2 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.oto.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.

16.3 Nothing in this clause 16 will prevent either Party from:

- seeking injunctive relief in the case of any breach or threatened breach by the other Party;
- commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions; or
- commencing proceedings in the case of non-payment of the Charges.

17. Changing this Agreement

17.1 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.

17.2 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.

18. Assignment

18.1 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.

18.2 Daisy may at any time assign its rights under this Agreement to its Service Provider and may subcontract the performance of all or part of the same Agreement to the Service Provider

19. Ownership

19.1 Title to, and all intellectual property rights in the Software, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, associated documents and all parts thereof, directly against the Customer.

19.2 Except as expressly provided in this Agreement, nothing in this Agreement will be deemed to or require Daisy to transfer, assign or license any intellectual property rights to the Customer.

19.3 The Customer will not be entitled to use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of Daisy or any part of Daisy so that any person might reasonably import a connection between those goods or services and Daisy or any part of Daisy. The Customer also agrees not to infringe any copyright, or registered or unregistered Trademark rights belonging to any third party in respect of any Device and/or other Equipment and/or Additional Equipment.

19.4 All information or materials supplied to Daisy by the Customer in connection with the Agreement, together with the copyright therein, will remain the property of the Customer and will, if the Customer so requires, be returned to the Customer on termination of the Agreement.

19.5 Any Software supplied is provided on the terms of a non-exclusive, non-transferable licence and such Software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Mobile Services.

20. Notices

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

- 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
- to the Customer at the address the Customer has asked Daisy to send invoices to.

21. Entire Agreement Clause

21.1 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.

21.2 All Orders shall be subject only to the terms of this Agreement. Any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing Orders shall be ineffective.

21.3 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.

22. 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.

23. 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.

24. Law and Jurisdiction

English law will govern this Agreement or any term of this Agreement and the English courts will have exclusive jurisdiction to settle any disputes that may arise out of or in connection with this Agreement.