

## Daisy Communications Limited/Vodafone Equipment Terms and Conditions

### 1. Definitions

1.1. In these terms and conditions (unless the context otherwise requires):

**Acceptable Use Policy** means the Daisy Communications Limited policy for the Customer's use of the Equipment, as set out on the Daisy Communications Limited Website, and as may be revised by Daisy Communications Limited from time to time;

**Affiliate** means in respect of any party hereto:

(1) any firm or body corporate in which such party directly or indirectly:

(a) owns more than half the capital or business assets; or

(b) has the power to exercise more than half the voting rights; or

(c) has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate; or

(d) has the right to manage the business of such firm or body corporate;

(2) any person, firm or body corporate which directly or indirectly has in or over such party the rights or powers listed in sub-clause (1) above (**a controller**); and

(3) any firm or body corporate in which a controller directly or indirectly has the rights or powers listed in sub-clause (1) above.

**Agreement** means the Agreement between Daisy Communications Limited and the Customer comprising these Terms and Conditions, together with the Application for Service or Order Form and/or any other documents specifically incorporated into such Agreement, and/or any Schedules hereto;

**Application for Service** (or Order Form as the case may be) means the Daisy Communications Limited paper or web-based application form containing the details of an Order placed by the Customer and any additional Terms and Conditions that specifically apply to the Services and/or Equipment comprising the order;

**Charges** mean any charges payable by the Customer to Daisy Communications Limited for the provision of the Equipment as set out in the Application for Service or Order Form and any other charges payable pursuant to this Agreement;

**Commencement Date** means the date upon which this Agreement is executed by both parties;

**Customer** means the person, proprietorship, partnership or company named in the Application for Service or Order Form and in the Network Contract and/or Daisy Communications Limited Customer Contract;

**Customer Services** means the helpdesk support to be provided by Daisy Communications Limited as may be notified to the Customer from time to time;

**Equipment** means any apparatus, equipment, hardware (excluding a SIM card) and/or software (including in each case any necessary licences) provided by Daisy Communications Limited or any third party contractor or agent of Daisy Communications Limited to the Customer to enable provision of the Services as described in the Network Contract and/or Daisy Communications Limited Customer Contract;

**Daisy** means Daisy Communications Limited with company registration number 04145329 and registered office: Daisy House, Lindred Rd Business Park, Nelson, Lancashire, BB9 5SR.

**Daisy Customer Contract** means the contract between Daisy Communications Limited and the Customer comprising the Order Form, together with any Terms and Conditions and/or other documents specifically incorporated into such contract, and/or any Schedules hereto;

**Daisy Communications Limited Price List** means the list of Charges in force from time to time and available on the Daisy Communications Limited Website.

**Daisy Website** means the website located at [www.daisygroupplc.com](http://www.daisygroupplc.com) or such other website as may be notified by Daisy from time to time;

**Minimum Period** means the period commencing on the Commencement Date and running for the number of months specified in the Application for Service or Order Form;

**Network** means Vodafone Limited of Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN (VL)

**Network Contract** means the contract between the Network and the Customer for the provision of the Services;

**Order** means an order placed by the Customer with Daisy Communications Limited for the provision of Services and/or Equipment;



**Order Form** (or Application for Service as the case may be) means the Daisy Communications Limited paper or web-based application form containing the details of an Order placed by the Customer and any additional Terms and Conditions that specifically apply to the Services and/or Equipment comprising the Order;

**Services** means the provision by the Network to the Customer of airtime, GPRS, SMS, and/or any other wireless services that the Network may from time to time provide pursuant to a Network Contract

**Start Date** means the target date for the provision of the Equipment to the Customer;

**Subsidy** means any allowance, credit, discount, funding, or other financial concession granted by Daisy Communications Limited to the Customer in relation to

(i) Equipment supplied at the Commencement Date or at any time during the Minimum Period of this Agreement; and/or

(ii) Services supplied at the Commencement Date or at any time during the Minimum Period of the Network Contract and/or Daisy Communications Limited Customer Contract;

**Third Party Provider** means any party from whom Daisy Communications Limited may procure items of Equipment.

1.2. The terms "includes" and "including" shall be construed as if followed by the words "without limitation".

1.3. Words importing the masculine shall include the feminine and neuter and vice-versa and words importing persons shall include bodies corporate and unincorporated associations and partnerships.

1.4. The headings to the clauses of this Agreement are for convenience only.

## 2. Term and Start Date

2.1. This Agreement shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Agreement) for the Minimum Period and thereafter unless and until terminated by either party giving to the other on or after the expiry of the Minimum Period not less than 30 days' prior written notice, such notice to expire not earlier than 30 days after the end of the Minimum Period.

2.2. In default of the number of months being specified in this Agreement, the Minimum Period shall automatically be 24 months.

2.3. Daisy Communications Limited shall use its reasonable endeavours to adhere to the Start Date. However, the Start Date and any other dates given in this Agreement are estimates provided for planning purposes only. Daisy Communications Limited shall have no liability for any failure to meet the Start Date or any other date and the Customer acknowledges that time is not of the essence in relation to this Clause 2.3.

2.4. No Order shall be binding upon Daisy Communications Limited unless and until accepted in writing by Daisy.

## 3. Obligations of Daisy Communications Limited

3.1. Daisy Communications Limited shall provide or procure the provision of the Equipment in accordance with the terms of this Agreement.

3.2. The Equipment is provided solely for use by the Customer in the course of the Customer's business.

3.3. Daisy Communications Limited shall not be obliged to provide the Equipment to the Customer:

3.3.1. if the Customer enters into this Agreement otherwise than in the course of its business; or

3.3.2. if the Customer uses the Equipment otherwise than in the course of its business; or

3.3.3. if the Customer uses the Equipment otherwise than for the purpose of utilising the Services; or

3.3.4. if the Customer is not a party to a Network Contract or Daisy Communications Limited

#### 4. Obligations of the Customer

4.1. The Customer shall only use the Equipment in accordance with the terms of this Agreement, the Acceptable Use Policy, any relevant manuals provided by Daisy Communications Limited from time to time and any other reasonable operating instructions given to the Customer by Daisy Communications Limited.

4.2. The Customer agrees not to use the Equipment in a way which would:

4.2.1. contravene or cause Daisy Communications Limited to contravene any laws or regulations including, but not limited to, the Communications Act 2003 ("the Act"), and any licence under the Act which is applicable to Daisy Communications Limited;

4.2.2. contravene the Acceptable Use Policy;

4.2.3. cause a degradation of the Services to any other customer of Daisy Communications Limited;

4.2.4. contravene any recommended operating guidelines, reasonable operating instructions or other instructions (including, without limitation, any manual) which Daisy Communications Limited may provide from time to time;

4.2.5. involve the sending of unsolicited marketing or advertising materials;

4.2.6. result in the transmission, receipt, upload, download, use, re-use or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, copyright, confidential information, privacy or any other rights; or

4.2.7. breach or cause Daisy Communications Limited to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998.

4.3. The Customer agrees not to use the Equipment except for the utilisation of the Services pursuant to a Network Contract and/or Daisy Communications Limited.

4.4. Any software provided to the Customer ("**Software**") for the purpose of using the Equipment is provided subject to the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, details of which shall be made available on request. The Customer shall observe and comply with these licensing conditions, including any restrictions on the use, copying, decompilation and transfer of the Software.

4.5. Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Agreement in accordance with a valid and subsisting Software Licence.

4.6. Any obligation under this Agreement on the Customer to do, or refrain from doing, any act or thing shall include an obligation upon the Customer to procure that each of its Affiliates also do, or refrain from doing, such act or thing.

4.7. The Customer agrees to indemnify Daisy Communications Limited against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by Daisy Communications Limited arising from any breach by the Customer of its obligations under this Agreement including this Clause 4, and for all costs and expenses reasonably incurred by Daisy Communications Limited in investigating and defending any such claims, proceedings or threatened

proceedings; such indemnity to continue notwithstanding the termination of this Agreement by either party.

## **5. Acknowledgement and Undertaking**

5.1. The Customer acknowledges that the Equipment shall remain the property of Daisy Communications Limited until any and all monies due pursuant to this Agreement and to the Network Contract and/or Daisy Communications Limited Customer Contract have been paid and the Customer will at all times make clear to its end-users and other third parties that the same is the property of Daisy Communications Limited

5.2. The Customer undertakes:

5.2.1. not to allow the Equipment to be repaired or maintained other than by an authorised representative of Daisy Communications Limited;

5.2.2. not to damage the Equipment and not to add modify or in any way interfere with the performance of the Equipment;

5.2.3. not to attempt to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Equipment;

5.2.4. not to remove any identification mark affixed to the Daisy Communications Limited Equipment showing that it is the property of Daisy Communications Limited or other third party supplier of such equipment;

5.2.5. to keep the Equipment in good working order and condition (allowing for fair wear and tear) during the period of this Agreement.

## **6. Risk and Warranty**

6.1. Acceptance of the Equipment shall take place when the Customer takes delivery thereof from Daisy Communications Limited, at which time risk in the Equipment will pass to the Customer who will liable for any loss of or damage to the Equipment.

6.2. Daisy Communications Limited warrants that each item of Equipment will conform in all respects to the manufacturer's specification for a period of 12 months ("the Warranty Period") (90 days in the case of Software) from the date of delivery to the Customer, unless special conditions apply to any such Equipment.

6.3. If, within the Warranty Period, the Customer notifies Daisy Communications Limited of any defect or fault in the Equipment arising from its normal use by the Customer, as a result of which the Equipment fails to conform in any material respect with the manufacturer's specification, Daisy Communications Limited shall, in its sole discretion, repair the faulty Equipment or replace it with the same or an equivalent item, either new or refurbished.

6.4. The warranty obligations set out in Clauses 6.2 and 6.3 shall not apply if the /Customer or its authorised user has modified, amended or damaged the Equipment or used it for a purpose or in a manner that is contrary to the Customer's obligations pursuant to Clause 4.

## **7. Charges and Payment**

7.1. Subject to the terms of the Network Contract and/or Daisy Communications Limited Customer Contract Daisy Communications Limited may, in its sole discretion, grant a Subsidy (as defined herein) or levy Charges upon the Customer for the Equipment or any part thereof

7.2. The Customer shall pay Daisy Communications Limited the Charges (if any) specified in the Order Form. Charges shall be payable by the Customer with effect from the Start Date.



7.3. Daisy Communications Limited may vary all or any of the Charges payable for further Equipment supplied to the Customer at any time after the Commencement Date

7.3.1. to pass through any changes made by a Third Party Provider.

7.3.2. to take account of any increase in Daisy Communications Limited costs of providing the Equipment.

7.3.3. to reflect any increase in the charges prevailing in the marketplace for equipment comparable to the Equipment.

7.4. Daisy Communications Limited may, without prejudice to its other rights and remedies under this Agreement and in its sole discretion, set off or contra any and all amounts and/or Subsidy to which the Customer may otherwise be entitled under this Agreement and/or the Network Contract and/or Daisy Communications Limited Customer Contract against any and all monies which fall due for payment by the Customer to Daisy Communications Limited.

7.5. All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in Daisy Communications Limited invoices at the applicable rate(s).

7.6. Daisy Communications Limited shall issue invoices at the date of supply to the Customer for any Equipment in respect of which Charges are payable.

7.7. The Customer shall pay within 14 days of the date of the Daisy invoice, unless otherwise agreed by Daisy Communications Limited. The Customer shall not be entitled to set-off, contra or withhold any payment due to Daisy Communications Limited against any sums of whatsoever nature that are due to the Customer from Daisy Communications Limited or that the Customer claims are due from Daisy Communications Limited, and time of payment of all sums under this Agreement is of the essence.

7.8. Where Charges are not paid by the Customer in accordance with Clause 7.7 Daisy Communications Limited may terminate this Agreement pursuant to Clause 8.1 and require the Customer to pay all sums due under this Agreement on demand, and reserve the right to charge:

7.8.1. interest (both before and after any judgment) on all amounts overdue from the Customer pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of statutory interest in force from time to time accruing on a daily basis from the due date of payment until receipt by Daisy Communications Limited of the overdue amount (including any accrued interest and compensation, PLUS

7.8.2. compensation arising out of late payment pursuant to section 5A of The Late Payment of Commercial Debts Regulations 2002.

7.9. Without prejudice to its other rights and remedies under this Agreement and in particular this clause 7, in the event of non-payment of any Charges by the Customer, Daisy Communications Limited reserves the right to demand the immediate return of the Equipment and/or take steps to recover same from the Customer, for which purpose it shall be entitled to enter any Customer premises in which it has reason to believe that the Equipment may be found.

7.10. In the event of non-recovery pursuant to Clause 7.9, or in the event of the Equipment being returned in what Daisy Communications Limited in its sole discretion considers to be unsatisfactory or incomplete condition and/or poor working order, Daisy reserves the right to charge the Customer with the repair or replacement cost of the Equipment at the prevailing rate plus any costs (including legal costs) incurred by Daisy Communications Limited in attempting to recover the Equipment from the Customer.

7.11. In the event of termination pursuant to Clauses 8 or 9, Daisy Communications Limited reserves the right to:



7.11.1. seek reimbursement from the Customer of any Subsidy already received by the Customer, such reimbursement to be calculated on a pro-rata basis according to the following formula;  
Subsidy X number of months remaining in Minimum Period / Minimum Period

7.11.2. withdraw any and all further Subsidy for which the Customer would have been eligible had the termination not taken place.

## **8. Termination**

Daisy Communications Limited may terminate this Agreement with immediate effect by notice in writing to the Customer if:

8.1. the Customer fails to comply with any of the material terms or conditions of this Agreement and/or the Network Contract and/or Daisy Communications Limited Customer Contract and the Customer does not remedy such failure within 14 days of a request to do so; or

8.2. any Third Party Provider is required to cease the provision of Equipment (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or

8.3. any Third Party Provider ceases to provide Equipment for whatever reason; or

8.4. any Third Party Provider changes the terms of its provision of Equipment to Daisy Communications Limited beyond the reasonable control of Daisy Communications Limited; or

8.5. if any third party services essential to the operation or full functionality of the Equipment ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or

8.6. if any authorisation licence or other permission for Daisy Communications Limited or any Third Party Provider under the Act is revoked, withdrawn or not renewed for whatever reason.

8.7. The Customer shall indemnify and hold Daisy Communications Limited harmless against any claim or demand of whatsoever nature and howsoever arising as a result of termination pursuant to this clause 8.

8.8. Upon termination pursuant to this clause 8 Daisy Communications Limited shall be entitled to exercise its rights for the return of any Equipment in accordance with Clauses 7.9 and 7.10.

8.9. In the event of termination pursuant to Clause 8.1 herein, Daisy Communications Limited may require the Customer to pay a deposit as a condition of providing or continuing to provide the Services. In the event of the Customer failing and/or refusing to pay such deposit when asked, Daisy Communications Limited reserve the right to terminate the Network Contract and/or Daisy Communications Limited Customer Contract in accordance with their terms. .

## **9. Termination by the Customer**

Where the Customer purports to terminate this Agreement at any time prior to the expiry of its Minimum Period or to the Minimum Period of the Network Contract other than in accordance with clause 9 thereof, or the Daisy Communications Limited Customer Contract as provided therein, Daisy Communications Limited shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a

repudiatory breach and accept such repudiation by terminating this Agreement in accordance with Clause 8.

## 10. Force Majeure

10.1. Neither party shall be obliged to carry out any obligation under this Agreement (other than the Customer's obligation to pay the Charges and to indemnify Daisy Communications Limited) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.

10.2. If any event described in clause 10.1 lasts more than 14 days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Agreement by giving 30 days written notice to the other party.

10.3. A party relying on this clause 10 shall use reasonable endeavours to mitigate the effects of a force majeure event.

## 11. Intellectual Property

11.1. The Customer acknowledges that any and all of the copyrights, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with any of the Equipment (including for the avoidance of doubt software provided by Daisy Communications Limited) are and shall remain the sole property of Daisy Communications Limited or its Third Party Providers.

11.2. Any and all software, documents, drawings and information supplied to the Customer in connection with this Agreement are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Daisy Communications Limited prior written consent.

11.3. Where software is provided to enable the Customer or to use the Equipment, Daisy Communications Limited grants the Customer, for the duration of this Agreement, a nonexclusive, non-transferable license to use the software for that purpose, and shall extend only to the right to access and use the Equipment and no other rights are granted to copy, install or run any software, application or systems of the Customer or any third party. Use of any third party software or systems provided shall be subject to the standard terms of the licensors or suppliers to Daisy Communications Limited.

## 12. Limitation of Liability

12.1. Daisy Communications Limited shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for:

12.1.1. loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect); or

12.1.2. loss of, corruption of, or damage to data or software (whether direct or indirect); or

12.1.3. loss of use of any computer or equipment (whether direct or indirect); or

12.1.4. wasted management or staff time (whether direct or indirect); or

12.1.5. any special indirect or consequential loss or damage; or

12.1.6. any loss suffered by any third party or any liability to any third party.

For the purposes of the foregoing, "loss" includes a partial loss or reduction in value as well as a complete or total loss.

12.2. The total liability of Daisy Communications Limited (other than liability governed by clause 12.3) arising out of or in connection with this Agreement (whether arising in Agreement, in tort, (including negligence), or as a result of pre-Agreement or other representations, or as a result of breach of statutory duty or otherwise howsoever) shall be limited to a sum equivalent to the total of Charges paid to Daisy Communications Limited under this Agreement or £100.00 (whichever the greater), for any one cause of action or series of causes of action arising out of the same event, act or omission (the "Per Claim Cap") and, in aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any 12 month period.

12.3. Nothing in this Agreement shall exclude or restrict the liability of either party for:

12.3.1. death or personal injury arising as a result of its negligence; or

12.3.2. for its fraud; or

12.3.3. for any other liability which cannot be excluded or limited by law.

12.4. The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

12.5. Daisy Communications Limited are not liable to the Customer for the acts or omissions of any other party, including providers of other equipment or services including internet services.

12.6. No delay in enforcing any of the provisions of this Agreement shall affect or restrict the rights of Daisy Communications Limited arising under this Agreement.

12.7. Daisy Communications Limited shall not be in breach of this Agreement or under any liability for any failure to perform or for delay in performing any obligation under this Agreement (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Agreement by the Customer or any voluntary act or omission of the Customer.

12.8. Daisy Communications Limited will not be responsible to the Customer or to any other user if changes in any of Daisy Communications Limited facilities, operations, procedures or services:

12.8.1. render obsolete or necessitate modification or alteration to or replacement of any of the Equipment or part thereof or any associated Software; or

12.8.2. otherwise affect performance of the Equipment.

12.9. If a number of events give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

12.10. Subject to clause 12.3 the Customer indemnifies Daisy Communications Limited and its Third Party Providers, sub-contractors and other suppliers against any and all claims for injury, loss, damage or expense occasioned by or arising directly or indirectly from the customer's possession, operation, use, modification or supply to a third party of the Equipment (or any part thereof) provided under or in connection with this Agreement.

12.11. The Customer acknowledges and agrees that the allocation of risk contained in this clause 12 is a recognition of the fact that the Equipment and any associated Software cannot be tested in every possible combination and therefore Daisy Communications Limited does not warrant that the



operation of such Equipment and/or Software will be uninterrupted or error free; and that it is not within Daisy Communications Limited control how and for what purpose such Equipment and/or Software is used by the Customer.

12.12. Each provision of this Agreement excluding or limiting liability, operates separately. If any part is held by a Court to be unreasonable or inapplicable, the other parts will continue to apply.

### **13. Severability**

Each provision of this Agreement operates separately. If any provision of this Agreement is held to be invalid in whole or part such provision shall be deemed not to form a part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

### **14. Variation and Assignment**

14.1. Notwithstanding any other provision of this Agreement, Daisy Communications Limited may vary this Agreement at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in Daisy Communications Limited Agreements with any Third Party Provider or any law or statutory obligation and will:

14.1.1. notify the Customer as soon as practical after Daisy Communications Limited has been notified or otherwise been made aware of the need for the said change;

14.1.2. use its reasonable endeavours to ensure that any change to the Agreement does not result in any deterioration in the Customer's use of the Equipment;

14.1.3. vary the Acceptable Use Policy to an extent that is reasonable and does not conflict with or undermine the terms of this Agreement.

14.2. Without prejudice to any and/or all of the provisions of this Agreement, Daisy Communications Limited may in its absolute discretion:

14.2.1. assign or otherwise transfer the benefit of this Agreement or any part thereof to any third party; or

14.2.2. subcontract the performance of this Agreement or any part thereof to one or a number of third parties.

14.3. The Customer shall not assign, sub-contract or otherwise transfer this Agreement or any of its rights or obligations arising under it without the written consent of Daisy Communications Limited.

14.4. Except as expressly permitted under this Agreement, no variation to the terms of this Agreement shall be valid unless agreed to in writing by a duly authorised representative of each party.

14.5. The Customer warrants and represents that it is entering into this Agreement in the course of a business.

14.6. Nothing in this Agreement is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venture.

### **15. Entire Agreement**

15.1. The Agreement as herein defined constitutes the entire Agreement between Daisy Communications Limited and the Customer and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter.

15.2. In the event of any conflict between the Terms and Conditions of this Agreement and the terms of any other document, then the order of precedence as to their interpretation shall be:



- 15.2.1. the Application for Service or Order Form;
- 15.2.2. the Terms and Conditions of this Agreement;
- 15.2.3. the terms of any other document.

15.3. Each party acknowledges that in entering into this Agreement (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral Agreement or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement or the documents referred to in it. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral Agreement or other assurance. The only remedy available to any party in respect of any representation, warranty, collateral Agreement or other assurance that is set out in this Agreement (or any document referred to in it) is for breach of Agreement under the terms of this Agreement (or the relevant document). Nothing in this Agreement shall, however, limit or exclude any liability for fraud.

## 16. No Waiver

Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.

## 17. Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same document.

## 18. Notices

18.1. Notices given under this Agreement must be in writing and may be delivered by hand or first class post to the following addresses:

18.1.1. To Daisy Communications Limited at the address of the Daisy office shown on the Order Form or any alternative address which Daisy Communications Limited notifies to the Customer;

18.1.2. To the Customer at the address to which the Customer asks Daisy to send invoices, the address of the Customer shown on the Order Form or, if the Customer is a company, to its registered office.

A party may change its address for service of notices by notice to the other in accordance with this clause.

18.2. A notice shall be treated as having been received:

18.2.1. if delivered by hand between 9.00 am and 5.00 pm on a Business Day (which time period is referred to in this clause as **Business Hours**), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and

18.2.2. if sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.

18.3. In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

18.4. For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

## 19. Third Party Rights

A third party that is not a party to this Agreement has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 20. Operative Law

This Agreement shall be construed in accordance with and governed by the laws of England and in the event of any dispute relating to or arising from this Agreement the parties agree to submit to the non-exclusive jurisdiction of the English Courts, save that Daisy Communications Limited may enforce any judgment or court order against the Customer anywhere in the world where the Customer may have assets.

## Vodafone Equipment Terms and Conditions

### 1. Definitions

1.1. In these terms and conditions (unless the context otherwise requires):

**Acceptable Use Policy** means the Daisy Communications Limited policy for the Customer's use of the Equipment, as set out on the Daisy Communications Limited Website, and as may be revised by Daisy Communications Limited from time to time;

**Affiliate** means in respect of any party hereto:

(1) any firm or body corporate in which such party directly or indirectly:

(a) owns more than half the capital or business assets; or

(b) has the power to exercise more than half the voting rights; or

(c) has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate; or

(d) has the right to manage the business of such firm or body corporate;

(2) any person, firm or body corporate which directly or indirectly has in or over such party the rights or powers listed in sub-clause (1) above (**a controller**); and

(3) any firm or body corporate in which a controller directly or indirectly has the rights or powers listed in sub-clause (1) above.

**Agreement** means the Agreement between Daisy Communications Limited and the Customer comprising these Terms and Conditions, together with the Application for Service or Order Form and/or any other documents specifically incorporated into such Agreement, and/or any Schedules hereto;

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**Customer** means the person, proprietorship, partnership or company named in the Application for Service or Order Form and in the Network Contract and/or Daisy Communications Limited Customer Contract;

**Customer Services** means the helpdesk support to be provided by Daisy Communications Limited as may be notified to the Customer from time to time;

**Equipment** means any apparatus, equipment, hardware (excluding a SIM card) and/or software (including in each case any necessary licences) provided by Daisy Communications Limited or any third party contractor or agent of Daisy Communications Limited to the Customer to enable provision of the Services as described in the Network Contract and/or Daisy Communications Limited Customer Contract;

**Daisy Communications Limited** means Daisy Communications Limited with company registration number **03974683**. and registered office: Daisy House, Lindred Rd Business Park, Nelson, Lancashire, BB9 5SR.



**Daisy Communications Limited Customer Contract** means the contract between Daisy Communications Limited and the Customer comprising the Order Form, together with any Terms and Conditions and/or other documents specifically incorporated into such contract, and/or any Schedules hereto;

**Daisy Communications Limited Price List** means the list of Charges in force from time to time and available on the Daisy Communications Limited Website.

**Daisy Communications Limited Website** means the website located at [www.daisygroupplc.com](http://www.daisygroupplc.com) or such other website as may be notified by Daisy Communications Limited from time to time;

**Minimum Period** means the period commencing on the Commencement Date and running for the number of months specified in the Application for Service or Order Form;

**Network** means Vodafone Limited of Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN (VL)

**Network Contract** means the contract between the Network and the Customer for the provision of the Services;

**Order** means an order placed by the Customer with Daisy Communications Limited for the provision of Services and/or Equipment;

**Order Form** (or Application for Service as the case may be) means the Daisy Communications Limited paper or web-based application form containing the details of an Order placed by the Customer and any additional Terms and Conditions that specifically apply to the Services and/or Equipment comprising the Order;

**Services** means the provision by the Network to the Customer of airtime, GPRS, SMS, and/or any other wireless services that the Network may from time to time provide pursuant to a Network Contract

**Start Date** means the target date for the provision of the Equipment to the Customer;

**Subsidy** means any allowance, credit, discount, funding, or other financial concession granted by Daisy Communications Limited to the Customer in relation to

(i) Equipment supplied at the Commencement Date or at any time during the Minimum Period of this Agreement; and/or

(ii) Services supplied at the Commencement Date or at any time during the Minimum Period of the Network Contract and/or Daisy Communications Limited Customer Contract;

**Third Party Provider** means any party from whom Daisy Communications Limited may procure items of Equipment.

1.2. The terms "includes" and "including" shall be construed as if followed by the words "without limitation".

1.3. Words importing the masculine shall include the feminine and neuter and vice-versa and words importing persons shall include bodies corporate and unincorporated associations and partnerships.

1.4. The headings to the clauses of this Agreement are for convenience only.



## **2. Term and Start Date**

2.1. This Agreement shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Agreement) for the Minimum Period and thereafter unless and until terminated by either party giving to the other on or after the expiry of the Minimum Period not less than 30 days' prior written notice, such notice to expire not earlier than 30 days after the end of the Minimum Period.

2.2. In default of the number of months being specified in this Agreement, the Minimum Period shall automatically be 24 months.

2.3. Daisy Communications Limited shall use its reasonable endeavours to adhere to the Start Date. However, the Start Date and any other dates given in this Agreement are estimates provided for planning purposes only. Daisy Communications Limited shall have no liability for any failure to meet the Start Date or any other date and the Customer acknowledges that time is not of the essence in relation to this Clause 2.3.

2.4. No Order shall be binding upon Daisy Communications Limited unless and until accepted in writing by Daisy Communications Limited.

## **3. Obligations of Daisy Communications Limited**

3.1. Daisy Communications Limited shall provide or procure the provision of the Equipment in accordance with the terms of this Agreement.

3.2. The Equipment is provided solely for use by the Customer in the course of the Customer's business.

3.3. Daisy Communications Limited shall not be obliged to provide the Equipment to the Customer:

3.3.1. if the Customer enters into this Agreement otherwise than in the course of its business; or

3.3.2. if the Customer uses the Equipment otherwise than in the course of its business; or

3.3.3. if the Customer uses the Equipment otherwise than for the purpose of utilising the Services; or

3.3.4. if the Customer is not a party to a Network Contract or Daisy Communications Limited

## **4. Obligations of the Customer**

4.1. The Customer shall only use the Equipment in accordance with the terms of this Agreement, the Acceptable Use Policy, any relevant manuals provided by Daisy Communications Limited from time to time and any other reasonable operating instructions given to the Customer by Daisy Communications Limited.

4.2. The Customer agrees not to use the Equipment in a way which would:

4.2.1. contravene or cause Daisy Communications Limited to contravene any laws or regulations including, but not limited to, the Communications Act 2003 ("the Act"), and any licence under the Act which is applicable to Daisy Communications Limited;

4.2.2. contravene the Acceptable Use Policy;

4.2.3. cause a degradation of the Services to any other customer of Daisy Communications Limited;

4.2.4. contravene any recommended operating guidelines, reasonable operating instructions or other instructions (including, without limitation, any manual) which Daisy Communications Limited may provide from time to time;

4.2.5. involve the sending of unsolicited marketing or advertising materials;

4.2.6. result in the transmission, receipt, upload, download, use, re-use or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, copyright, confidential information, privacy or any other rights; or

4.2.7. breach or cause Daisy Communications Limited to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998.

4.3. The Customer agrees not to use the Equipment except for the utilisation of the Services pursuant to a Network Contract and/or Daisy Communications Limited Customer Contract.

4.4. Any software provided to the Customer ("**Software**") for the purpose of using the Equipment is provided subject to the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, details of which shall be made available on request. The Customer shall observe and comply with these licensing conditions, including any restrictions on the use, copying, decompilation and transfer of the Software.

4.5. Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Customer shall ensure that any Software is only used during the continuance of this Agreement in accordance with a valid and subsisting Software Licence.

4.6. Any obligation under this Agreement on the Customer to do, or refrain from doing, any act or thing shall include an obligation upon the Customer to procure that each of its Affiliates also do, or refrain from doing, such act or thing.

4.7. The Customer agrees to indemnify Daisy Communications Limited against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by Daisy Communications Limited arising from any breach by the Customer of its obligations under this Agreement including this Clause 4, and for all costs and expenses reasonably incurred by Daisy Communications Limited in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this Agreement by either party.

## 5. Acknowledgement and Undertaking

5.1. The Customer acknowledges that the Equipment shall remain the property of Daisy Communications Limited until any and all monies due pursuant to this Agreement and to the Network Contract and/or Daisy Communications Limited Customer Contract have been paid and the Customer will at all times

make clear to its end-users and other third parties that the same is the property of Daisy Communications Limited

5.2. The Customer undertakes:

5.2.1. not to allow the Equipment to be repaired or maintained other than by an authorised representative of Daisy Communications Limited;

5.2.2. not to damage the Equipment and not to add modify or in any way interfere with the performance of the Equipment;

5.2.3. not to attempt to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the Equipment;

5.2.4. not to remove any identification mark affixed to the Daisy Communications Limited Equipment showing that it is the property of Daisy Communications Limited or other third party supplier of such equipment;

5.2.5. to keep the Equipment in good working order and condition (allowing for fair wear and tear) during the period of this Agreement.

## **6. Risk and Warranty**

6.1. Acceptance of the Equipment shall take place when the Customer takes delivery thereof from Daisy Communications Limited, at which time risk in the Equipment will pass to the Customer who will liable for any loss of or damage to the Equipment.

6.2. Daisy Communications Limited warrants that each item of Equipment will conform in all respects to the manufacturer's specification for a period of 12 months ("the Warranty Period") (90 days in the case of Software) from the date of delivery to the Customer, unless special conditions apply to any such Equipment.

6.3. If, within the Warranty Period, the Customer notifies Daisy Communications Limited of any defect or fault in the Equipment arising from its normal use by the Customer, as a result of which the Equipment fails to conform in any material respect with the manufacturer's specification, Daisy Communications Limited shall, in its sole discretion, repair the faulty Equipment or replace it with the same or an equivalent item, either new or refurbished.

6.4. The warranty obligations set out in Clauses 6.2 and 6.3 shall not apply if the /Customer or its authorised user has modified, amended or damaged the Equipment or used it for a purpose or in a manner that is contrary to the Customer's obligations pursuant to Clause 4.

## **7. Charges and Payment**

7.1. Subject to the terms of the Network Contract and/or Daisy Communications Limited Customer Contract Daisy Communications Limited may, in its sole discretion, grant a Subsidy (as defined herein) or levy Charges upon the Customer for the Equipment or any part thereof

7.2. The Customer shall pay Daisy Communications Limited the Charges (if any) specified in the Order Form. Charges shall be payable by the Customer with effect from the Start Date.

7.3. Daisy Communications Limited may vary all or any of the Charges payable for further Equipment supplied to the Customer at any time after the Commencement Date

7.3.1. to pass through any changes made by a Third Party Provider.

7.3.2. to take account of any increase in Daisy Communications Limited costs of providing the Equipment.

7.3.3. to reflect any increase in the charges prevailing in the marketplace for equipment comparable to the Equipment.

7.4. Daisy Communications Limited may, without prejudice to its other rights and remedies under this Agreement and in its sole discretion, set off or contra any and all amounts and/or Subsidy to which the Customer may otherwise be entitled under this Agreement and/or the Network Contract and/or Daisy Communications Limited Customer Contract against any and all monies which fall due for payment by the Customer to Daisy Communications Limited.

7.5. All Charges are stated exclusive of value added tax (VAT) or other applicable taxes. The Customer shall be responsible for paying VAT and other applicable taxes which shall be included in Daisy Communications Limited invoices at the applicable rate(s).

7.6. Daisy Communications Limited shall issue invoices at the date of supply to the Customer for any Equipment in respect of which Charges are payable.

7.7. The Customer shall pay within 14 days of the date of the Daisy Communications Limited invoice, unless otherwise agreed by Daisy Communications Limited. The Customer shall not be entitled to set-off, contra or withhold any payment due to Daisy Communications Limited against any sums of whatsoever nature that are due to the Customer from Daisy Communications Limited or that the Customer claims are due from Daisy Communications Limited, and time of payment of all sums under this Agreement is of the essence.

7.8. Where Charges are not paid by the Customer in accordance with Clause 7.7 Daisy Communications Limited may terminate this Agreement pursuant to Clause 8.1 and require the Customer to pay all sums due under this Agreement on demand, and reserve the right to charge:

7.8.1. interest (both before and after any judgment) on all amounts overdue from the Customer pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of statutory interest in force from time to time accruing on a daily basis from the due date of payment until receipt by Daisy Communications Limited of the overdue amount (including any accrued interest and compensation, PLUS

7.8.2. compensation arising out of late payment pursuant to section 5A of The Late Payment of Commercial Debts Regulations 2002.

7.9. Without prejudice to its other rights and remedies under this Agreement and in particular this clause 7, in the event of non-payment of any Charges by the Customer, Daisy Communications Limited reserves the right to demand the immediate return of the Equipment and/or take steps to recover same from the Customer, for which purpose it shall be entitled to enter any Customer premises in which it has reason to believe that the Equipment may be found.

7.10. In the event of non-recovery pursuant to Clause 7.9, or in the event of the Equipment being returned in what Daisy Communications Limited in its sole discretion considers to be unsatisfactory or incomplete condition and/or poor working order, Daisy reserves the right to charge the Customer with the repair or replacement cost of the Equipment at the prevailing rate plus any costs (including legal costs) incurred by Daisy Communications Limited in attempting to recover the Equipment from the Customer.

7.11. In the event of termination pursuant to Clauses 8 or 9, Daisy Communications Limited reserves the right to:



7.11.1. seek reimbursement from the Customer of any Subsidy already received by the Customer, such reimbursement to be calculated on a pro-rata basis according to the following formula;  
Subsidy X number of months remaining in Minimum Period / Minimum Period

7.11.2. withdraw any and all further Subsidy for which the Customer would have been eligible had the termination not taken place.

## **8. Termination**

Daisy Communications Limited may terminate this Agreement with immediate effect by notice in writing to the Customer if:

8.1. the Customer fails to comply with any of the material terms or conditions of this Agreement and/or the Network Contract and/or Daisy Communications Limited Customer Contract and the Customer does not remedy such failure within 14 days of a request to do so; or

8.2. any Third Party Provider is required to cease the provision of Equipment (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or

8.3. any Third Party Provider ceases to provide Equipment for whatever reason; or

8.4. any Third Party Provider changes the terms of its provision of Equipment to Daisy Communications Limited beyond the reasonable control of Daisy Communications Limited; or

8.5. if any third party services essential to the operation or full functionality of the Equipment ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or

8.6. if any authorisation licence or other permission for Daisy Communications Limited or any Third Party Provider under the Act is revoked, withdrawn or not renewed for whatever reason.

8.7. The Customer shall indemnify and hold Daisy Communications Limited harmless against any claim or demand of whatsoever nature and howsoever arising as a result of termination pursuant to this clause 8.

8.8. Upon termination pursuant to this clause 8 Daisy Communications Limited shall be entitled to exercise its rights for the return of any Equipment in accordance with Clauses 7.9 and 7.10.

8.9. In the event of termination pursuant to Clause 8.1 herein, Daisy Communications Limited may require the Customer to pay a deposit as a condition of providing or continuing to provide the Services. In the event of the Customer failing and/or refusing to pay such deposit when asked, Daisy Communications Limited reserve the right to terminate the Network Contract and/or Daisy Communications Limited Customer Contract in accordance with their terms. .

## **9. Termination by the Customer**

Where the Customer purports to terminate this Agreement at any time prior to the expiry of its Minimum Period or to the Minimum Period of the Network Contract other than in accordance with clause 9 thereof, or the Daisy Communications Limited Customer Contract as provided therein, Daisy Communications Limited shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a

repudiatory breach and accept such repudiation by terminating this Agreement in accordance with Clause 8.

## 10. Force Majeure

10.1. Neither party shall be obliged to carry out any obligation under this Agreement (other than the Customer's obligation to pay the Charges and to indemnify Daisy Communications Limited) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.

10.2. If any event described in clause 10.1 lasts more than 14 days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Agreement by giving 30 days written notice to the other party.

10.3. A party relying on this clause 10 shall use reasonable endeavours to mitigate the effects of a force majeure event.

## 11. Intellectual Property

11.1. The Customer acknowledges that any and all of the copyrights, trademarks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with any of the Equipment (including for the avoidance of doubt software provided by Daisy Communications Limited) are and shall remain the sole property of Daisy Communications Limited or its Third Party Providers.

11.2. Any and all software, documents, drawings and information supplied to the Customer in connection with this Agreement are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without Daisy Communications Limited prior written consent.

11.3. Where software is provided to enable the Customer or to use the Equipment, Daisy Communications Limited grants the Customer, for the duration of this Agreement, a nonexclusive, non-transferable license to use the software for that purpose, and shall extend only to the right to access and use the Equipment and no other rights are granted to copy, install or run any software, application or systems of the Customer or any third party. Use of any third party software or systems provided shall be subject to the standard terms of the licensors or suppliers to Daisy Communications Limited.

## 12. Limitation of Liability

12.1. Daisy Communications Limited shall not be liable whether in contract, tort (including negligence), breach of statutory duty or otherwise for:

12.1.1. loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect); or

12.1.2. loss of, corruption of, or damage to data or software (whether direct or indirect); or

12.1.3. loss of use of any computer or equipment (whether direct or indirect); or

12.1.4. wasted management or staff time (whether direct or indirect); or

12.1.5. any special indirect or consequential loss or damage; or

12.1.6. any loss suffered by any third party or any liability to any third party.

For the purposes of the foregoing, "loss" includes a partial loss or reduction in value as well as a complete or total loss.

12.2. The total liability of Daisy Communications Limited (other than liability governed by clause 12.3) arising out of or in connection with this Agreement (whether arising in Agreement, in tort, (including negligence), or as a result of pre-Agreement or other representations, or as a result of breach of statutory duty or otherwise howsoever) shall be limited to a sum equivalent to the total of Charges paid to Daisy Communications Limited under this Agreement or £100.00 (whichever the greater), for any one cause of action or series of causes of action arising out of the same event, act or omission (the "Per Claim Cap") and, in aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any 12 month period.

12.3. Nothing in this Agreement shall exclude or restrict the liability of either party for:

12.3.1. death or personal injury arising as a result of its negligence; or

12.3.2. for its fraud; or

12.3.3. for any other liability which cannot be excluded or limited by law.

12.4. The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

12.5. Daisy Communications Limited are not liable to the Customer for the acts or omissions of any other party, including providers of other equipment or services including internet services.

12.6. No delay in enforcing any of the provisions of this Agreement shall affect or restrict the rights of Daisy arising under this Agreement.

12.7. Daisy Communications Limited shall not be in breach of this Agreement or under any liability for any failure to perform or for delay in performing any obligation under this Agreement (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Agreement by the Customer or any voluntary act or omission of the Customer.

12.8. Daisy Communications Limited will not be responsible to the Customer or to any other user if changes in any of Daisy' facilities, operations, procedures or services:

12.8.1. render obsolete or necessitate modification or alteration to or replacement of any of the Equipment or part thereof or any associated Software; or

12.8.2. otherwise affect performance of the Equipment.

12.9. If a number of events give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

12.10. Subject to clause 12.3 the Customer indemnifies Daisy Communications Limited and its Third Party Providers, sub-contractors and other suppliers against any and all claims for injury, loss, damage or expense occasioned by or arising directly or indirectly from the customer's possession, operation, use, modification or supply to a third party of the Equipment (or any part thereof) provided under or in connection with this Agreement.

12.11. The Customer acknowledges and agrees that the allocation of risk contained in this clause 12 is a recognition of the fact that the Equipment and any associated Software cannot be tested in every



possible combination and therefore Daisy Communications Limited does not warrant that the operation of such Equipment and/or Software will be uninterrupted or error free; and that it is not within Daisy Communications Limited control how and for what purpose such Equipment and/or Software is used by the Customer.

12.12. Each provision of this Agreement excluding or limiting liability, operates separately. If any part is held by a Court to be unreasonable or inapplicable, the other parts will continue to apply.

### **13. Severability**

Each provision of this Agreement operates separately. If any provision of this Agreement is held to be invalid in whole or part such provision shall be deemed not to form a part of the Agreement and the enforceability of the remainder of the Agreement shall not be affected.

### **14. Variation and Assignment**

14.1. Notwithstanding any other provision of this Agreement, Daisy Communications Limited may vary this Agreement at any time by notice in writing to the Customer if it needs to do so to comply with terms contained in Daisy Communications Limited Agreements with any Third Party Provider or any law or statutory obligation and will:

14.1.1. notify the Customer as soon as practical after Daisy Communications Limited has been notified or otherwise been made aware of the need for the said change;

14.1.2. use its reasonable endeavours to ensure that any change to the Agreement does not result in any deterioration in the Customer's use of the Equipment;

14.1.3. vary the Acceptable Use Policy to an extent that is reasonable and does not conflict with or undermine the terms of this Agreement.

14.2. Without prejudice to any and/or all of the provisions of this Agreement, Daisy Communications Limited may in its absolute discretion:

14.2.1. assign or otherwise transfer the benefit of this Agreement or any part thereof to any third party; or

14.2.2. subcontract the performance of this Agreement or any part thereof to one or a number of third parties.

14.3. The Customer shall not assign, sub-contract or otherwise transfer this Agreement or any of its rights or obligations arising under it without the written consent of Daisy Communications Limited.

14.4. Except as expressly permitted under this Agreement, no variation to the terms of this Agreement shall be valid unless agreed to in writing by a duly authorised representative of each party.

14.5. The Customer warrants and represents that it is entering into this Agreement in the course of a business.

14.6. Nothing in this Agreement is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venture.

### **15. Entire Agreement**

15.1. The Agreement as herein defined constitutes the entire Agreement between Daisy Communications Limited and the Customer and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter.



15.2. In the event of any conflict between the Terms and Conditions of this Agreement and the terms of any other document, then the order of precedence as to their interpretation shall be:

15.2.1. the Application for Service or Order Form;

15.2.2. the Terms and Conditions of this Agreement;

15.2.3. the terms of any other document.

15.3. Each party acknowledges that in entering into this Agreement (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral Agreement or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement or the documents referred to in it. Each party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral Agreement or other assurance. The only remedy available to any party in respect of any representation, warranty, collateral Agreement or other assurance that is set out in this Agreement (or any document referred to in it) is for breach of Agreement under the terms of this Agreement (or the relevant document). Nothing in this Agreement shall, however, limit or exclude any liability for fraud.

## 16. No Waiver

Any waiver of any breach of any provision of the Agreement will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Agreement.

## 17. Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same document.

## 18. Notices

18.1. Notices given under this Agreement must be in writing and may be delivered by hand or first class post to the following addresses:

18.1.1. To Daisy Communications Limited at the address of the Daisy Communications Limited office shown on the Order Form or any alternative address which Daisy Communications Limited notifies to the Customer;

18.1.2. To the Customer at the address to which the Customer asks Daisy Communications Limited to send invoices, the address of the Customer shown on the Order Form or, if the Customer is a company, to its registered office.

A party may change its address for service of notices by notice to the other in accordance with this clause.

18.2. A notice shall be treated as having been received:

18.2.1. if delivered by hand between 9.00 am and 5.00 pm on a Business Day (which time period is referred to in this clause as **Business Hours**), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and

18.2.2. if sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.

18.3. 18.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).



18.4. For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

### **19. Third Party Rights**

A third party that is not a party to this Agreement has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

### **20. Operative Law**

This Agreement shall be construed in accordance with and governed by the laws of England and in the event of any dispute relating to or arising from this Agreement the parties agree to submit to the non-exclusive jurisdiction of the English Courts, save that Daisy Communications Limited may enforce any judgment or court order against the Customer anywhere in the world where the Customer may have assets.