

DALY SYSTEMS LIMITED - STANDARD TERMS & CONDITIONS FOR ON-SITE HARDWARE SUPPORT

1. Interpretation

1.1 The definition and rules of interpretation in this condition apply in the contract.

Additional Services – any Excluded Maintenance performed by the Supplier under the Contract.

Additional Services Fees – the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

Business Day – a day other than a Saturday, Sunday or Public holiday in England when banks in London are open for business.

Charges – the Maintenance Fees and the Additional Services Fees together.

Commencement Date – the date set out on the front sheet to these conditions.

Commercially Reasonable – the same degree of priority and diligence with which the Supplier meets the support needs of its other similar customers.

Confidential Information – all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers, or subcontractors involved in the provision or receipt of the Maintenance Services, who need to know the confidential information in question representatives to the other party and that party's Representatives in connection with the Contract, which is either labelled as such or else which should be reasonably considered as confidential because of its nature and the manner of its disclosure.

Contract – the Customer's purchase order or written acceptance of the quote and the Supplier's acceptance of it under condition 3.

Customer – the person, firm or company who purchase the Maintenance Services and Additional Services from the Supplier.

Excluded Causes means –

- a) a defect in the manufacturers design of the Maintained Equipment;
- b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- c) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier;
- d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved by the Supplier in accordance with condition 6.9;
- e) the Customer or a third party moving the Maintained Equipment;
- f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied.
- g) a failure of malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- i) the neglect or misuse or vandalism or burglary of the Maintained Equipment; or;
- j) the effects of accidental or natural damage to the Equipment including without limitation lightning, strike, flood, power surges, storm damage, fire and other damage to or deterioration of the Location.

Excluded Maintenance means –

any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded causes;

- a) any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes;
- b) any visit to the Location by the Supplier which the Supplier in its absolute discretion deems to be unnecessary or where the Supplier is unable to undertake or complete maintenance services as a result of the Supplier's inability to gain access to the Location or parts of the Location for the purposes of providing the maintenance services or for the purposes of completing testing of the Maintained Equipment;
- c) any time spend by the Supplier attending the Customer's health and safety training, inductions or briefings;
- d) the relocation of the Maintained Equipment;
- e) the delivery and installation of the Maintained Equipment;
- f) the installation of cabling and the relocation of cabling, whether installed by the Supplier or a third party;

Good Working Order – the Maintained Equipment operates in accordance with the Operating Manuals.

Initial Period – a period of 12 months commencing on the Commencement Date.

Location – the location of the Maintained Equipment at the Customer's premises as specified on the front sheet to these conditions, or any other location as may be agreed by the parties in writing from time to time.

Maintained Equipment – the equipment specified on the front sheet to these conditions,
Maintenance Services means;

- a) making any adjustments to the Maintained Equipment; and
- b) replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order, in accordance with condition 2.2.

Normal Business Hours – 8.30am to 5.00pm GMT on a business day.

Operating Manuals – all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

Renewal Period – each successive monthly period after the Initial Period for which the Contract is renewed.

Retail Prices Index – the Retail Prices Index (All Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, that other index as the parties may agree most closely resembles such index.

Standard Maintenance Fees – the fees payable by the Customer for the provision of the Maintenance Services, as set out in the front sheet to these conditions, as these fees are varied from time to time in accordance with the terms of the Contract.

Supplier – Daly Systems Limited registered number 3144071 whose registered office is Park House, 37 Clarence Street, Leicester, Leicestershire. LE1 3RW.

Term – the Initial Period together with all Renewal Periods.

1.2 Condition and paragraph headings shall not affect the interpretation of the Contract.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.9 A reference to writing or written includes faxes but not e-mail.

1.10 References to conditions are to the conditions of the Contract.

1.11 Any words following the terms, including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Application of Conditions

2.1 These conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. Effect of Purchase Order

3.1 The Customer's purchase order and/or return of the contract front sheet constitutes an offer by the Customer to purchase the Maintenance Services and the Additional Services specified in it on these conditions; accordingly the execution and return of the acknowledgement copy of the purchase order/contract front sheet, shall establish a contract for the supply and purchase of those Maintenance Services and Additional Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in, the purchase order shall not govern the Contract.

4. Maintenance Services

4.1 On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in good Working Order, the Supplier shall use commercially reasonable endeavours to attend at the Location to perform Maintenance Services of the Maintained Equipment during Normal Business Hours and agrees to pay in accordance with the front sheet to these conditions.

4.2 As part of the Maintenance Services, the Supplier shall provide Help Desk Support by means of the following telephone number 0116 242 6999 and email address service@dalys.co.uk

4.3 In performing the Maintenance Services, the Supplier shall use commercially reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, the Supplier shall either arrange for a further visit to the Location within Normal Business Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site. For the avoidance of doubt such services shall be Additional Services to be charged for and paid for at the Additional Services Rates.

4.4 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel.

5. Replacement and spare parts

5.1 In performing the Maintenance Services and the Additional Services, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. The Supplier shall charge the Customer for and the Customer shall pay the Supplier for the spare parts used when the Supplier provides the Additional Services.

5.2 All spare parts and/or replacement provided by the Supplier to the Customer shall become part of the Maintained Equipment and the property of the Customer.

6. Customer's obligations

The customer shall:

6.1 ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the agreement under which the Maintained Equipment was supplied or, as relevant, the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;

6.2 notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;

6.3 provide all assistance reasonably requested by the Supplier in order to permit initial telephone remote diagnosis of faults in the Maintained Equipment to be undertaken;

6.4 carry out instructions provided by the Supplier with a view to resolving the fault prior to an engineer being despatched to the Location;

6.5 where the Supplier determines that a site visit to the Location is required, the Customer shall promptly provide the name of a contact at the Location who shall make themselves available to demonstrate the fault in the Maintained Equipment and once the

Maintenance Services have been provided shall make promptly themselves available to confirm that the fault in the Maintained Equipment has been rectified;

6.6 at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Supplier, its employees, contractors and agents and provide them with adequate and safe working space and any telecommunications facilities as are reasonably required to enable the Supplier to perform the Maintenance Services and the Additional Services while at the Location;

6.7 provide the Supplier with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;

6.8 take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Location;

6.9 not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without prior written approval of the Supplier;

6.10 not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld or delayed);

6.11 store any reserve equipment only in conditions approved by the Supplier and make this equipment available for periodic maintenance, as with all other Maintained Equipment;

6.12 only use supplies or materials approved by the Supplier (approval not to be unreasonably withheld or delayed); and

6.13 be responsible for insuring the Maintained Equipment.

7. Excluded Maintenance

7.1 The Supplier is not obliged to perform any Excluded Maintenance. Where the Supplier performs any Excluded Maintenance it may charge, and the Customer shall pay, the Additional Service Fees in respect of that work.

7.2 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge and the Customer shall pay, the Additional Services Fees in respect of that work.

8. Charges

8.1 For the performance of the Maintenance Services, the Customer shall pay to the Supplier the Standard Maintenance fees.

8.2 For the performance of any Additional Services, the Customer shall pay to the Supplier the Additional Services Fees.

8.3 The Standard Maintenance fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with condition 5.1, and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with condition 5.1).

8.4 The Standard Maintenance Fees shall be due and payable in full to the Supplier annually or monthly as agreed in advance and within 30 days of receipt of a valid invoice from the Supplier. Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from the Supplier. Any charges for spare parts recoverable in accordance with condition 5.1 shall be due within 30 days of receipt of a valid invoice from the Supplier.

8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under condition 11, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

8.6 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

8.7 With effect from the first anniversary of the Commencement Date and each anniversary of the Commencement Date, the Supplier reserves the right to increase the Charges by providing not less than 20 days prior written notice of its intention to do so. Additionally, should changes to support be made during the year, such as additional hardware being added to the network, the Supplier may increase charges in the month following the change by providing 7 days written notice.

9. Supplier warranties

9.1 The Supplier represents and warrants to the Customer that:

9.1.1 the Maintenance Services and the Additional Services shall be performed:

9.1.1.1 by an appropriate number of suitably qualified and experienced personnel;

9.1.1.2 using all reasonable skill and care; and

9.1.1.3 in accordance with all applicable laws and regulations in force from time to time.

9.1.2 all components and equipment supplied or used in the course of the provision of the Maintenance Services and the Additional Services shall operate in accordance with their technical specifications;

9.1.3 the Supplier has the full capacity and authority and all necessary permissions, licenses and consents necessary to enter into, and perform its obligations under, the Contract.

9.2 Except as expressly stated in the Contract, all warranties, conditions, and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

10. Liability

10.1 Neither party excludes or limits liability to the other party for:

10.1.1 fraud or fraudulent misrepresentation;

10.1.2 death or personal injury caused by negligence; or

10.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

10.2 Subject always to condition 10.1 neither party shall be liable whether in contract, tort (including for negligence or breach of statutory duty) misrepresentation (whether innocent or negligent), restitution or otherwise, for;

10.2.1 and loss (whether direct or indirect) of profits, business, revenue or goodwill;
10.2.2 loss or corruption (whether direct or indirect) of data or information; or
10.2.3 any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
10.3 Subject always to condition 10.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 100% of the total Charges paid by the Customer to the Supplier during the 12 month period immediately preceding the date on which the cause of action first arose.

11. Confidentiality

11.1 The term Confidential Information does not include any information that:

11.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this condition);

11.1.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

11.1.3 was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

11.1.4 was known to the receiving party before the information was disclosed to it by the disclosing party;

11.1.5 the parties agree in writing is not confidential or may be disclosed; or

11.1.6 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

11.2 Each party shall keep the other party's Confidential Information confidential and shall not:

11.2.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Contract (Permitted Purpose); or

11.2.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this condition.

11.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:

11.3.1 it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and

11.3.2 at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this condition 11.

11.4 A party may disclose Confidential Information to the extent required by law, by any government or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of their disclosure as possible.

11.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Contract, are granted to the other party, or are to be implied from the Contract.

11.6 The provisions of this condition 11 shall continue to apply after termination of the contract.

12. Term and termination

12.1 The Contract shall commence on the Commencement Date. Unless terminated earlier in accordance with condition 12, the Contract shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Contract at the end of the Initial Period or the relevant Renewal Period as the case may be. Without prejudice to the foregoing the Supplier may give 30 days' written notice to the Customer before the end of the Initial Period or any relevant Renewal Period to terminate the Contract in relation to equipment that has become obsolete and such equipment shall thereafter be excluded from the definition of Maintained Equipment.

12.2 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

12.2.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;

12.2.2 the other party commits a material breach of any material terms of the Contract (other than failure to pay any amounts due under the Contract) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

12.2.3 the other party:

12.2.3.1 suspends, or threatens to suspend payment of its debts;

12.2.3.2 is unable to pay its debts as they fall due or admits inability to pay its debts;

12.2.3.3 (being a company) is deemed unable to pay its debts within the meaning of section 123 on the Insolvency Act 1986;

12.2.3.4 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 123 on the Insolvency Act 1986;

12.2.3.5 (being a partnership) has any partner to whom any of condition 12.2.3.1 to condition 12.2.3.4 apply.

12.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

12.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

12.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over that other party (being a company);

12.2.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

12.2.8 a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;

12.2.9 a creditor or encumbrancer of that other part attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of that other party's assets and that attachment or process is not discharged within 14 days;

12.2.10 that other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

12.2.11 there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

12.4 Termination of the Contract for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

12.5 On termination of the Contract for any reason, each party shall as soon as reasonably practicable:

12.5.1 return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVD;s or other information provided to it by the other party or data for the purposes of the Contract, including all documents and materials (and any copies), containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it shall provide written evidence (in the form of a letter signed by a director) no later than 14 days after termination of the Contract that these have been destroyed and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to confidentiality obligations in condition 11;

12.5.2 return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;

12.5.3 the Supplier shall provide all reasonable assistance to the Customer and/or and third party engaged by the Customer in connection with the maintenance and support of the Maintained Equipment;

12.5.4 the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to the Contract.

12.6 Regardless of its obligations in this condition 12, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under condition 12.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Condition 11 shall continue to apply to any retained documents and materials subject to this condition 12.

13. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for three months, the party not affected may terminate the Contract by giving 30 days' written notice to the affected party.

14. Assignment

The Contract is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other party (which is not to be unreasonably withheld or delayed).

15. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Notice

16.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next-working –day delivery service providing proof of postage, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.2 Any notice or communication shall be deemed to have been received if delivered by hand on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by fax at 9.00am on the next Business Day after transmission, or otherwise at 9.00am on the second Business Day after posting or at the time recorded by the delivery service.

16.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purpose of this condition, writing shall not include e-mail.

17. Entire Agreement

17.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. Severance

19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

19.2 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. No partnership or agency

20.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. Third-party rights

No person other than a party to the Contract shall have any rights to enforce any term of the Contract.

22. Rights and remedies

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by the law.

23. Governing law

The Contract and any dispute or claim arising out of or in conjunction with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).