

SPECIFIC CONDITIONS H1 – BUSINESS CONTINUITY AND DISASTER RECOVERY SERVICES

These Specific Conditions govern the Business Continuity and Disaster Recovery Services that may be provided by the Company under an Order Form with any other document or terms and conditions referred to in the Order Form including but not limited to the General Conditions for the Supply of Products and/or Services (the Conditions”), which shall be deemed to be incorporated into the Contract for the performance of any Backup Services performed under these Specific Conditions.

1 DEFINITIONS

- 1.1 Capitalised terms used in these Specific Conditions have the following meanings for the purposes of these Specific Conditions only;
- “Business Continuity and Disaster Recovery Services” means the services to be provided by the Company to the Customer under these Specific Conditions and as detailed in an Order Form;
- “Customer Equipment” means the Customer’s computer hardware or software, including but not limited to Operating Systems, Hypervisors and Application Software used by the Customer at the Customer Premises;
- “Dedicated Services” means the provision by the Company of a Recovery Facility reserved for the use of the Customer during an Invocation and stipulated as “Dedicated” in the Order Form;
- “Disaster” means any unplanned incident which causes the Customer Premises or Customer Equipment to be inoperable, or inaccessible;
- “Invocation” means each occasion when there is a Notification of a Disaster to the Company which results in the Customer utilising the Business Continuity and Disaster Recovery Service;
- “Multiple Invocation” means an Invocation resulting in a request to utilise Business Continuity and Disaster Recovery Services that have already been allocated to another customer of the Company as a result of a prior Invocation by that other customer;
- “Notification” or “Notify” means the approved process as defined in this Specific Condition that the Customer must follow in order to call upon the Business Continuity and Disaster Recovery Services;
- “Recovery Facility” means the equipment and other resources referred to in the applicable Specific Condition and specified as such in the Order Form;
- “Response Period” means a period commencing on Notification of the Disaster, to continue as stipulated in clause 4.3;
- “Response Time” means the time after Invocation, as specified in the Order Form, within which the Company will make available the Recovery Facility to the Customer;
- “Service Centre” means the address specified in the Order Form as the Service Centre address pertaining to the Business Continuity and Disaster Recovery Services;
- “Sole-use Services” means the provision by the Company of a Recovery Facility reserved for the use of the Customer during an Invocation and stipulated as “Sole-use” in the Order Form;
- “Testing” means use of the whole or part of the Recovery Facility by the Customer for testing purposes pursuant to clause 5;
- “Test Days” means the number of days available each year for the Testing as specified in the Order Form;
- “User” means any party authorised by the Customer to use the Electronic Communications Network or a Public Electronic Communications Network where it is provided by the Company as part of the Services.

- 1.2 All other capitalised terms used in these Specific Conditions that are not defined in paragraph 1.1 have the meanings stated in the Conditions.

2 SERVICE COMMENCEMENT DATE

- 2.1 The Commencement Date of the Backup Services is the date specified as such in the Order Form or if no date is specified the Effective Date.

3 MINIMUM TERM AND DURATION

- 3.1 The Minimum Term for Business Continuity and Disaster Recovery Services is as set out in the Order Form, or if no Minimum Term is specified, twelve (12) calendar months from the Commencement Date.
- 3.2 Subject to earlier termination in accordance with the terms of this Contract, this Contract will continue for the Minimum Term. Upon the expiry of the Minimum Term, this Contract will renew automatically for a further period of twelve months (a “Rollover Period”), unless terminated by the Customer giving not less than 12 (twelve) months’ notice in writing to the Company prior to the end of the Minimum Term.
- 3.3 At the end of a Rollover Period (and each subsequent Rollover Period), this Contract will renew automatically for a further Rollover Period, unless terminated by the Customer giving not less than 12 (twelve) months’ notice in writing to the Company prior to the end of the then current Rollover Period.

4 DISASTER INVOCATION

- 4.1 The Customer shall immediately notify the Company by telephone when a Disaster occurs and shall confirm such occurrence to the Company in writing as soon as reasonably possible.
- 4.2 Subject to clause 7, following such Invocation the Company will make the Recovery Facility available to the Customer in accordance with the applicable Specific Condition.
- 4.3 The Response Period shall continue until the Customer Premises becomes operational or upon the expiry of 14 (fourteen) weeks from notification of the Disaster whichever is the sooner.
- 4.4 Following Invocation, the Customer shall use all reasonable endeavours to reoccupy the Customer Premises or locate and occupy suitable alternative premises, so as to release the Recovery Facility and Service Centre as soon as possible.

5 TESTING

- 5.1 The Company will make the Recovery Facility, at the request of the Customer, available to the Customer for the Test Days at the Service Centre to enable the Customer to ensure that its procedures and, where applicable, operating systems and application software operate to its satisfaction on the Recovery Facility.
- 5.2 A failure by the Customer to request Testing during any particular 12 (twelve) month period will not entitle the Customer to transfer the Test Days that were allocated to the 12 (twelve) month period to a subsequent 12 (twelve) month period, nor will it entitle the Customer to a refund or reduction in the Charges.
- 5.3 Testing shall be for the number of days per annum detailed in the Schedule(s) and scheduled by mutual agreement and in accordance with the Company's procedures in effect from time to time. Additional testing can be purchased by the Customer for additional Charges.
- 5.4 The Customer acknowledges and accepts that another customer Invocation has priority over the Customer's use of the Recovery Facility and/or Service Centre for Testing and will vacate the Recovery Facility and/or Service Centre within 2 (two) hours of being requested to do so following an Invocation by another customer.
- 5.5 At the end of Testing, the Company will delete all data used by the Customer during Testing. If the Customer wishes to delete their data, the Customer must delete the data before the end of Testing and within the Testing timeframe scheduled.

6 CUSTOMER RESPONSIBILITIES

- 6.1 The Customer shall at all times operate and maintain the Customer Premises and/or Customer Equipment and its installation in a prudent manner and at all times in accordance with good practice and, where applicable, the manufacturer's recommendations
- 6.2 The Customer warrants as at Service Commencement Date that the Customer Premises and/or Customer Equipment is fully operational and that it has and will continue to keep in force an appropriate maintenance agreement for any Customer Equipment comprised in the Customer Premises with a suitable maintenance provider.
- 6.3 Prior to any Invocation for failure of Customer Equipment, the Customer will ensure that it used all reasonable endeavours to repair or replace such failed Customer Equipment prior to an invocation whether under a maintenance agreement or not.
- 6.4 The Customer acknowledges that the Company may not be able to recover the Customer Equipment in part or in whole during Invocation and Testing if the Customer Equipment is no longer supported by the manufacturer. In this situation, the Company will use its reasonable endeavours to recover the Customer Equipment but the Company shall have no liability for any failure to recover the Customer Equipment.
- 6.5 The Customer will at all times comply with the Company's procedures and processes applicable to Invocation and Testing, the use and supply of the Business Continuity and Disaster Recovery Services, escalation and fault reporting.
- 6.6 The Customer will ensure that all the Customer's employees, customers, representatives and visitors that may attend the Service Centre comply with the policies and procedures, including health and safety and security policies and procedures that apply at the Service Centre.
- 6.7 During the Response Period the Customer will:
 - 6.7.1 operate the Service Centre and Recovery Facility and its installation in a prudent manner in accordance with the applicable manufacturer's recommendations
 - 6.7.2 ensure that the Service Centre and Recovery Facility is operated only by competent trained employees; and
 - 6.7.3 supply all consumables for use on the Recovery Facility and at the Service Centre.
- 6.8 Where the Customer makes use of a Public Electronic Communications Network as part of the Services provided by Daisy under this Agreement:
 - 6.8.1 the Customer undertakes to use the Public Electronic Communications Network and to procure that each User that uses the Public Electronic Communications Network does so in accordance with such reasonable operating instructions as may be notified in writing or verbally (and confirmed in writing) to the Customer by the Company from time to time.
 - 6.8.2 without limitation to the generality of clause 6.8.1, the Customer undertakes not to use the Public Electronic Communications Network and undertakes to prevent each User from using the Public Electronic Communications Network:
 - 6.8.2.1 for the communication, publication, transmission or receipt of any material which is defamatory, offensive or abusive or of an obscene, nuisance, hoax; threatening or menacing character; or
 - 6.8.2.2 in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright, privacy or confidentiality); or
 - 6.8.2.3 in a manner that is associated with a criminal offence
 - 6.8.2.4 to cause annoyance, inconvenience or needless anxiety; or
 - 6.8.2.5 unlawfully or fraudulently or in breach of any legislation.
- 6.9 The Company shall have the right (without prejudice to any other rights to terminate this Contract) to terminate the Customer's connection to the Public Electronic Communications Network by notice in writing to the Customer if the Customer or a User fails to comply with or acts in breach of its obligations under clause 6.8.2.

7 MULTIPLE INVOCATIONS

- 7.1 The Business Continuity and Disaster Recovery Services, with the exception of Dedicated Services, are sold on a syndicated basis to multiple customers that have equal call upon the same facilities and equipment. It is therefore acknowledged by the Customer that:
 - 7.1.1 the Company has multiple customers for its services and cannot guarantee that there will not be competing demands for the contracted Business Continuity and Disaster Recovery Services. If Multiple Invocations occur, another customer may already have invoked all or part of the contracted Business Continuity and Disaster Recovery Services, and it may therefore not be possible for the Company to make the Recovery Facility (excluding Dedicated Services) available at all or in part to the Customer.
 - 7.1.2 the Company shall not be liable if, due to Multiple Invocations, the Business Continuity and Disaster Recovery Services are not available to the Customer, but it shall use reasonable endeavours to make alternative Recovery Facilities available, in the order of Invocation, from Daisy's portfolio of then available resources.
 - 7.1.3 During Multiple Invocations, notwithstanding that the Customer may have priority as a result of a prior Invocation, the Customer (not being a Customer with Dedicated Services) shall co-operate with the Company reasonable efforts to provide disaster recovery services to other customers.

8 SERVICE CENTRE LOCATION CHANGE

- 8.1 The Company shall be entitled to change without consent the location of a Service Centre by giving the Customer no less than 90 (ninety) days' notice and such change will take effect without the need for written consent of the Customer.

9 CHARGES AND PAYMENT

- 9.1 The Charges for the Business Continuity and Disaster Recovery Services are as set out in the Order Form.
- 9.2 The Company will invoice the Charges for the Business Continuity and Disaster Recovery Services annually in advance.