

## ANNEX

### DATA PROCESSING TERMS

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#### 1 DEFINITIONS

1.1 In this Annex the following words and expressions shall have the following meanings unless the context otherwise requires:

“Appropriate Technical and Organisational Measures”	shall be interpreted in accordance with the Privacy Laws.
“Customer Personal Data”	means any Personal Data, the Processing of which is subject to Privacy Laws, that is controlled by the Customer and its customers (where applicable) which the Processor Processes in the course of providing the Services under the TSA, wherever the Processing takes place.
“Data Controller”	shall be interpreted in accordance with the Privacy Laws.
“Data Processor”	shall be interpreted in accordance with the Privacy Laws.
“Data Subject”	shall be interpreted in accordance with the Privacy Laws.
“EU Data Protection Law”	means all applicable EU data protection and privacy laws, including: <ul style="list-style-type: none"><li>(i) prior to 25 May 2018, the EU Data Protection Directive 95/46/EC and, on and after 25 May 2018, the General Data Protection Regulation 2016/679;</li><li>(ii) the Privacy and Electronic Communications Directive 2002/58/EC; and</li><li>(iii) any other European Union or EU Member State laws made under or pursuant to (i) or (ii),</li></ul> in each case as such laws may be amended or superseded from time to time.
“GDPR”	means the General Data Protection Regulation (EU) 2016/679.
“Personal Data ”	shall be interpreted in accordance with the Privacy Laws.
“Privacy Laws”	means applicable laws serving to ensure the protection of Personal Data (including in connection with the Processing of Personal Data), and the protection of the rights and freedoms (in particular, their right to privacy) of Data Subjects relating to their Personal Data, including EU Data Protection Law and UK Data Protection Law, in each case as such laws may be amended or superseded from time to time.
“Processing”	shall be interpreted in accordance with the Privacy Laws (and “Process” shall be construed accordingly).
“Processor”	means Magrathea Telecommunications Limited (company number 04260485).
“Standard Contractual	means the European Commission's Standard Contractual

Clauses”	Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Decision 2010/87/EU, a copy of which comprises Annex 2 to this Annex, or any replacement or additional form approved by the European Commission.
“TSA”	means the telecommunications services agreement which has been entered into by the Processor and the Customer and of which this Annex forms part.
“UK Data Protection Law”	means all applicable UK data protection and privacy laws including any UK law which replaces EU Data Protection Law, or which implements or transposes EU Data Protection Law into UK law.

## 2 DATA PROTECTION

- 2.1 The Processor agrees, in relation to the Customer Personal Data, that the Customer is the Data Controller (and therefore controls what happens to the Customer Personal Data) and the Processor is the Data Processor.
- 2.2 The subject-matter and the duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and the categories of Data Subjects are set out in Appendix 1 to this Annex.
- 2.3 The Processor acknowledges and agrees that nothing in this Annex relieves the Processor from its responsibilities and liabilities under the Privacy Laws.
- 2.4 When the Processor Processes Customer Personal Data in the course of providing the Services, the Processor will:
- 2.4.1 Process the Customer Personal Data only in accordance with written instructions from the Customer, including with regard to transfers of Customer Personal Data to a third country or international organisation except where required to do so by law. If the Processor is required by law to Process the Customer Personal Data for any other purpose, the Processor will inform the Customer of this requirement before the Processing, unless that law prohibits this on important grounds of public interest. If the Customer issues a direction to the Processor which requires the Processor to do something that is inconsistent with the terms of the TSA, the Processor may wish to make a reasonable charge, in which case that charge will be as agreed in writing between the parties;
- 2.4.2 take reasonable steps to ensure the reliability and competence of the Processor personnel who have access to the Customer Personal Data;
- 2.4.3 ensure that the personnel required to Process the Customer Personal Data:
- (a) are informed of the confidential nature of the Customer Personal Data;
  - (b) are subject to appropriate obligations of confidentiality; and
  - (c) do not publish, disclose or divulge any of the Customer Personal Data to any third party unless directed in writing to do so by the Customer;
- 2.4.4 implement and maintain Appropriate Technical and Organisational Measures to protect the Customer Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration

- or disclosure;
- 2.4.5 taking into account the nature of the Processing, assist the Customer:
- (a) by taking Appropriate Technical and Organisational Measures and in so far as it is possible, in fulfilling the Customer's obligations to respond to requests from Data Subjects exercising their rights. The Processor shall notify the Customer of any requests from Data Subjects without undue delay; and
  - (b) in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR or equivalent provisions in the Privacy Laws;
- 2.4.6 on expiry or termination of the TSA, at the Customer's option, either delete or return to the Customer all the Customer Personal Data (unless the Processor is required to retain it by law). If the Customer requires the Processor to delete the Customer Personal Data in any other circumstances, the Processor may make a reasonable charge for doing so;
- 2.4.7 make available to the Customer all information necessary to demonstrate its compliance with its obligations in this Annex and allow the Customer and its auditors or authorised agents to conduct audits and inspections during the term of the TSA (and provide reasonable assistance in connection therewith) for the purpose of verifying that the Processor is Processing Customer Personal Data in accordance with the Processor's obligations under this Annex, the TSA and applicable Privacy Laws; and
- 2.4.8 not give access to or transfer any Customer Personal Data to any third party (including any group companies or sub-contractors) without the prior written consent of the Customer. Where the Customer does consent to the Processor engaging a sub-contractor to carry out any part of the Services, the Processor must ensure the reliability and competence of the third party, its employees and agents who may have access to the Customer Personal Data and must include in any contract with the third party, provisions in favour of the Customer which are equivalent to those in this clause 2 and as are required by applicable Privacy Laws. For the avoidance of doubt, where a third party fails to fulfil its obligations under any sub-processing agreement or any applicable Privacy Laws, the Processor will remain fully liable to the Customer for the fulfilment of the Processor's obligations under this Annex and the TSA.
- 2.5 The Processor shall notify the Customer immediately if, in the Processor's opinion, an instruction for the Processing of Customer Personal Data given by the Customer infringes applicable Privacy Laws.
- 2.6 The Processor shall communicate any claims or requests in respect of the Customer Personal Data without delay to the Customer to enable the Customer to provide details to its customers.
- 2.7 If the Processor becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to any Customer Personal Data that the Processor Processes when providing the Services (a "Personal Data Breach"), the Processor will:
- 2.7.1 notify the Customer within two working days;
  - 2.7.2 provide the Customer (as soon as possible) with a detailed description of the Data Breach, the type of Customer Personal Data that was the subject of the Data Breach and the identity of each affected person, as soon as such information can be collected or otherwise becomes available (as well as periodic updates to this information and any other information the Customer

may reasonably request relating to the Data Breach); and

- 2.7.3 not release or publish any filing, communication, notice, press release, or report concerning the Data Breach without the Customer's prior written approval (except where required to do so by law).
- 2.8 If, pursuant to Article 28(7) or Article 28(8) of the GDPR, the Information Commissioner adopts standard contractual clauses for the matters referred to in Article 28(3) and Article 28(4) of the GDPR and the Customer notifies the Processor that it wishes to incorporate any element of any such standard contractual clauses into this Annex, the Processor will agree to the changes as reasonably required by the Customer to achieve this.
- 2.9 The Processor will not Process Customer Personal Data outside the European Economic Area, or a country in respect of a valid adequacy decision has been issued by the European Commission, except with the prior written consent of the Customer.
- 2.10 The Customer hereby gives its consent to the Processing of Customer Personal Data in the United Kingdom and, unless a valid adequacy decision is issued by the European Union in respect of the United Kingdom, the transfer of Customer Personal Data from the Customer to the Processor shall be made subject to the terms of the Standard Contractual Clauses. The Parties shall complete all relevant details in, and execute, Appendix 2 and take all other actions required to legitimise the transfer.

### **3 GENERAL**

- 3.1 In the event of any conflict between the TSA and this Annex, the provisions of this Annex shall prevail to the extent that they are more stringent than those in the TSA.

## APPENDIX 1

Subject-matter of the Processing:	The Processing of Personal Data in the course of the Processor delivering voice and data services.
Duration of the Processing:	The term of the TSA.
Nature and purpose of the Processing:	The collection, transmission, storage and deletion of Personal Data in order to deliver managed voice and data services to the Customer on the terms set out in the TSA.
Type of Personal Data:	The Customer Personal data may include, among other information, personal contact information (such as name, address, telephone or mobile number), unique IDs collected from mobile devices and any other data transmitted as a consequence of the Data Controller and its end users using the Processor's services under the terms of the TSA.
Categories of Data Subject:	Data Subjects may include the Customer's representatives (including employees, contractors, partners and customers), end users of the Customer and its customers, and individuals attempting to communicate or transfer Personal Data to end users of the Processor's services.

## APPENDIX 2

### Standard contractual clauses for the transfer of personal data from the European Union to processors established in third countries (controller-to-processor transfers)

#### For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation:

address:

tel:

fax: N/A

e-mail:

Other information needed to identify the organisation: N/A

**(the data exporter)**

Name of the data importing organisation: Magrathea Telecommunications Limited

address: 5 Commerce Park, Brunel Road, Theale, Berkshire RG7 4AB

tel: 0345 004 0040

fax: 0345 004 0041

e-mail: info@magrathea-telecom.co.uk

Other information needed to identify the organisation: N/A

**(the data importer)**

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in ANNEX A.

### 1. Definitions

For the purposes of the Clauses:

- (a) **personal data, special categories of data, process/processing, controller, processor, data subject and supervisory authority** shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1);
- (b) **the data exporter** means the controller who transfers the personal data;

- (c) **the data importer** means the processor who agrees to receive from the data exporter personal data intended for processing on its behalf after the transfer in accordance with its instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) **the sub-processor** means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with its instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) **the applicable data protection law** means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) **technical and organisational security measures** means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

## 2. Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in ANNEX A which forms an integral part of the Clauses.

## 3. Third-party beneficiary clause

The data subject can enforce against the data exporter this clause 3, clause 4(b) to clause 4(i), clause 5(a) to clause 5(e) and clause 5(g) to clause 5(j), clause 6.1 and clause 6.2, clause 7, clause 8.2 and clause 9 to clause 12 as third-party beneficiary.

The data subject can enforce against the data importer this clause, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2 and clause 9 to clause 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- 3.1 The data subject can enforce against the sub-processor this clause 3.1, clause 5(a) to clause 5(e) and clause 5(g), clause 6, clause 7, clause 8.2, and clause 9 to clause 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce

them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### **4. Obligations of the data exporter**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data-processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in ANNEX B to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to clause 5(b) and clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of ANNEX B and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;



- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subjects as the data importer under the Clauses; and
- (j) that it will ensure compliance with clause 4(a) to clause 4(i).

## **5. Obligations of the data importer**

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in ANNEX B before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation;
  - (ii) any accidental or unauthorised access; and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain

commercial information, in which case it may remove such commercial information, with the exception of ANNEX B which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with clause 11; and
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## **6. Liability**

6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in clause 3 or in clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.

6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or its sub-processor of any of their obligations referred to in clause 3 or in clause 11 because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.

6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the sub-processor of any of their obligations referred to in clause 3 or in clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## **7. Mediation and jurisdiction**

7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
  - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
- 7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## **8. Cooperation with supervisory authorities**

- 8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
- 8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
- 8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in clause 5(b).

## **9. Governing Law**

The Clauses shall be governed by the law of the Member State in which the data exporter is established (i.e. the jurisdiction in which it is incorporated/registered) or such other jurisdiction as the parties may agree in writing.

## **10. Variation of the contract**

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## **11. Sub-processing**

- 11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

- 11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the address given on the TSA.
- 11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

**12. Obligation after the termination of personal data processing services**

- 12.1 The parties agree that on the termination of the provision of data-processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data-processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full): .....

Position: .....

Address: .....

Other information necessary in order for the contract to be binding (if any): .....

Signature .....

On behalf of the data importer:

Name (written out in full): .....

Position: .....

Address: .....

Other information necessary in order for the  
contract to be binding (if any): .....

Signature .....

**ANNEX A to the Standard Contractual Clauses**

This Annex A forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this ANNEX A.

**Data exporter**

The data exporter is (please specify briefly your **[■insert customer’s activities]** activities relevant to the transfer):

**Data importer**

The data importer is: Magrathea Telecommunications Limited

**Data subjects**

The personal data transferred may concern the following categories of data subjects: Data subjects may include the data exporter’s representatives (including employees, contractors, partners and customers), end users of the data exporter and its customers, and individuals attempting to communicate or transfer personal data to end users of the data importer’s services.

**Categories of data**

The personal data transferred concern the following categories of data: The personal data may include, among other information, personal contact information (such as name, address, telephone or mobile number), unique IDs collected from mobile devices and any other data transmitted as a consequence of the data exporter and its end users using the data importer’s services under the terms of the TSA.

**Special categories of data (if appropriate)**

The personal data transferred concern the following special categories of data: None

**Processing operations**

The personal data transferred will be subject to the following basic processing activities: The collection, transmission, storage and deletion of personal data in order to deliver managed voice and data services to the data exporter on the terms set out in the TSA.

DATA EXPORTER

DATA IMPORTER

Name:.....

Authorised signature:.....

Name:.....

Authorised signature:.....

## **ANNEX B to the Standard Contractual Clauses**

This ANNEX B forms part of the Clauses and must be completed and signed by the parties.

**Description of the technical and organisational security measures implemented by the data importer in accordance with clause 4(d) and clause 5(c) (or documents/legislation attached):**

[■]



**Customer Signature:**

**Name:**

**Title:**

**Company Name:**

**Date:**

**Magrathea Signature:**

**Name:**

**Title:**

**Date:**

<b>Customer Account Number (if known):</b>	
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