

DATED

TELECOMMUNICATIONS SERVICES AGREEMENT

between

MAGRATHEA TELECOMMUNICATIONS LIMITED

and

PARTIES

1. **Magrathea Telecommunications Ltd** incorporated and registered in England with company number 04260485 whose registered office is at 5 Commerce Park, Brunel Road, Theale, Berkshire, RG7 4AB, United Kingdom ("**Magrathea**"); and
2. _____ incorporated and registered in _____ whose registered office is at _____ ("**Customer**").

WHEREAS

- A. Magrathea is a provider of electronic communications networks and services.
- B. The Customer wishes to utilise Magrathea's services.

IT IS AGREED THAT

1. INTERPRETATION AND DEFINITIONS

The following provisions shall have effect for the interpretation of this agreement:

- 1.1 Words in the singular shall include the plural and vice versa.
- 1.2 A person includes a natural person, corporate or unincorporated body.
- 1.3 The Annex and the Schedules to this agreement shall be incorporated into and shall form part of the agreement. Any reference to this agreement includes the Annex and the Schedules.
- 1.4 Clause, Annex, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.5 In this agreement terms and expressions have the following meanings unless the context otherwise requires:

"Act"	the Communications Act 2003;
"Annex"	the annex to this agreement;
"Applicable Laws"	the laws of England and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the use of the Service;
"Associated Company"	in relation to a party, its 'subsidiary' or 'holding company' (as defined in the Companies Act 2006) or another subsidiary of its holding company;
"BT"	British Telecommunications plc, registered in England with company number 1800000;

“Call”	a transmission path through an electronic communications network for the sending of signals, and a reference to conveyance of a Call by a party means the establishment by that party of a transmission path through that party's network and the conveyance by that party in accordance with this agreement of a signal over such transmission path;
“Charges”	Magrathea’s charges for the Services as described in the Schedules, Price Lists and Rate Sheets hereto and as varied from time to time according to the terms of this agreement;
“CLI”	has the meaning given to Calling Line Identification in the CLI Guidelines;
“CLI Guidelines”	the Guidelines for the provision of Customer Line Identification Facilities and other related services, published by Ofcom, as may be amended or replaced from time to time;
“Dispute Resolution Procedure”	shall be Magrathea’s Dispute Resolution Procedure, as published from time to time;
“Email”	Electronic Mail;
“End User”	a subscriber of a Service provided under this agreement who is the ultimate user of the Service;
“Intellectual Property Rights”	copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trademarks or service marks, know-how and all other industrial or intellectual property rights or trade secrets existing at any time in any jurisdiction including any application therefor and all rights that shall apply to them;
“Minimum Term”	the minimum term for each Service as specified in the Schedules;
“Ofcom”	the Office of Communications, Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or any of its successors;
“Party”	a party to this agreement;
“Phone-paid Services Authority”	the organisation that regulates phone-paid services in the UK, of Clove Building, 4 Maguire Street, London SE1 2NQ, or any successor body;
“PSTN”	the Public Switched Telephone Network;

“Schedule”	a schedule to this agreement. Some (but not all) Schedules detail the Services;
“Service”	any service provided under this agreement or any Schedule;
“Site”	location where Services are provided;
“Working Day”	any day other than Saturdays, Sundays, public or bank holidays in England.

2. COMMENCEMENT AND DURATION

- 2.1 This agreement shall commence on the date hereof and shall continue in force until all of the Services have been ceased in accordance with the Schedules hereto, unless terminated earlier in accordance with Clause 6 below.
- 2.2 The Parties may, after the date on which this agreement commences, add additional Services to the scope of this agreement by agreeing and signing one or more additional Schedules. Any such Schedule shall form part of this agreement from the date on which it was signed by both Parties.

3. OBLIGATIONS OF THE PARTIES

- 3.1 Magrathea shall provide the Services as described in the Schedules hereto.
- 3.2 Magrathea shall ensure that the equipment used to provide the Service is fit for purpose.
- 3.3 Magrathea may from time to time make changes to equipment used to provide the Service. Such changes are at the sole discretion of Magrathea, and may be made without the prior consent of the Customer.
- 3.4 Magrathea shall provide the Customer with reasonable technical and sales support, which Magrathea shall in its sole discretion consider necessary and appropriate.
- 3.5 The Customer shall, upon request, provide Magrathea with all information and/or materials as may reasonably be required by Magrathea regarding any products or services offered to the Customer’s End Users, agents or resellers through utilisation of the Service.
- 3.6 The Customer shall ensure that the Services are not used for any unlawful purpose whatsoever including the transmission or offering of any information or service or other material which is unlawful, abusive, harmful, threatening, defamatory, pornographic or which in any way infringes the Intellectual Property Rights of Magrathea or any third party or which may cause offence in any way. The Customer shall ensure that no third party Intellectual Property Right is infringed by the choice of telephone number for a particular service.

- 3.7 The Customer agrees to indemnify Magrathea against all costs and liabilities arising out of all claims which result from, or involve an allegation of, any breach of Clause 3.6 above.
- 3.8 The Customer shall co-operate with Magrathea in relation to any complaints, enquiries or investigations regarding services offered by the Customer. The Customer shall bear in full any reasonable costs incurred by Magrathea associated with such complaints, investigations, or enquiries or any action whether or not brought by or against Magrathea.
- 3.9 The Customer shall ensure that the use of Magrathea's facilities by any third party complies with the terms of this agreement.
- 3.10 Each Party agrees to notify the other as soon as reasonably practicable in the event that it becomes aware of any fault in the Service.
- 3.11 Neither Party shall at any time during the life of this agreement or at any time thereafter without the prior written consent of the other Party use the name of the other Party in relation to the Service or in connection with any services provided by the Customer or on letterheads, in correspondence, publicity material, advertisements or other publications. Upon termination of this agreement, any consent that has been obtained shall be withdrawn forthwith.
- 3.12 Neither Party shall have authority to conclude contracts directly on behalf of the other Party nor the right or authority to make or settle any claims by or against either Party nor to pledge the credit of the other Party nor give any warranty nor make any representation on behalf of the other Party nor commit the other Party to any obligation or liability of any kind other than to provide the Services under this agreement.
- 3.13 Each Party shall comply with the CLI Guidelines published by Ofcom. In the case of Calls originating outside of the UK, the Parties shall comply with any regulations governing the presentation of calling line numbers in the country from which the Call originates or through which it transits.
- 3.14 The Customer agrees to use the Service in accordance with all Applicable Laws. The Customer shall maintain such records as are necessary to comply with all Applicable Laws.
- 3.15 The Customer agrees to take measures to protect the security and resilience of its network and services in compliance with Sections 105A to 105D of the Act. Such measures shall include but not necessarily be limited to the following:
- 3.15.1 implementing access control and authentication mechanisms for network and information systems;
 - 3.15.2 ensuring that software is not tampered with or altered, for example by use of firewalls;
 - 3.15.3 ensuring that data critical to network security (such as passwords) are not disclosed or tampered with and are changed regularly; and
 - 3.15.4 regularly checking for malware.

4. CHARGES AND PAYMENT

- 4.1 In consideration of the Services provided under this agreement the Customer agrees to pay the Charges. All Charges stated are exclusive of Value Added Tax.
- 4.2 Some Services must be paid for on a pre-paid basis. Subject to Clauses 4.4 and 4.5 below, any sums remaining in pre-paid accounts after termination of this agreement shall be repaid to the Customer, subject to Magrathea's right to levy an administration charge amounting to 5 per cent of the unused credit or £50 whichever is greater.
- 4.3 No interest shall accrue or be due on any pre-payments received from the Customer.
- 4.4 Following the Customer's cessation of use of all Services, if Magrathea has been unable to contact the Customer and has received no contact from the Customer for a period of 12 months or more, Magrathea shall have the right to close the Customer's account and retain any pre-paid sums in the Customer's account.
- 4.5 Magrathea shall have the right to use any available funds in the Customer's pre-paid account in remittance for any overdue invoice for any post-paid service, after notifying the Customer.
- 4.6 In the event that the Customer shall dispute any sum due to Magrathea in respect of any Service, the Dispute Resolution Procedure shall apply.
- 4.7 In respect of any Service which does not have to be paid for on a pre-paid basis, the Customer shall pay Magrathea's charges in accordance with the provisions of the relevant Schedule. If the Customer is registered or located in the United Kingdom, the Customer shall complete a direct debit instruction for the payment of the charges before the Service commences.

5. INTEREST

- 5.1 In the event that any sums due to Magrathea under this agreement or any of its Schedules are not paid by the date on which they become due then Magrathea shall be entitled to either charge the amount of interest amounting to 4 per cent over the base lending rate of HSBC Bank (or any other bank that the Parties may agree from time to time) in force at that time, or £100.00, whichever is greater.

6. SUSPENSION AND TERMINATION

- 6.1 Magrathea may suspend the Service in the event that and for so long as the Customer is in material breach of this agreement (including, subject to Clause 4.6 above, failure to pay any sum due under this agreement) and shall have

failed to remedy such breach within 7 days of receipt of a notice specifying the breach and requiring it to be remedied.

6.2 Notwithstanding Clause 6.1 above, Magrathea reserves the right to suspend the Service or any part thereof forthwith without prior notice:

6.2.1 to the extent necessary to prevent or restrict the incidence of any fraud or other illegal activity in connection with the Service;

6.2.2 to the extent necessary to comply with an order or direction of Ofcom, Phone-paid Services Authority or any other competent regulatory or law enforcement authority;

6.2.3 in the event that the Customer is in breach of an obligation under the Annex or any Schedule hereto to retain funds in a pre-paid account; or

6.2.4 if there is a material and immediate threat to Magrathea's network integrity or the integrity of the PSTN.

6.3 Either Party may terminate this agreement forthwith by giving written notice:

6.3.1 in Magrathea's case upon the expiration of thirty (30) days' written notice following suspension in accordance with Clause 6.1 or 6.2 above;

6.3.2 if the other Party ceases trading;

6.3.3 if any step is taken to wind up or dissolve the Customer, a receiver, and/or manager or administrator is appointed over any of the Customer's assets or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

6.3.4 if it is required to do so by Ofcom, Phone-paid Services Authority or any other regulatory or governmental body.

6.4 Magrathea may temporarily suspend the Service in the event that it wishes to carry out maintenance, upgrade works, or back-ups. Magrathea will use all reasonable endeavours to minimise the duration of the suspension. In the event of planned works Magrathea will provide the Customer with at least 7 days' notice. In the event of emergency works, Magrathea will provide the Customer with as much notice as possible in advance of any suspension).

6.5 Either Party shall be entitled to terminate this agreement by giving to the other not less than ninety (90) days' notice of termination, such notice expiring no sooner than the end of the Minimum Term in any and all Schedules hereto.

6.6 Termination shall be without prejudice to the rights and obligations accruing up to and including the date of termination.

6.7 In the event that the Customer wishes to enter into a subsequent agreement with Magrathea following termination by Magrathea in accordance with Clause 6.3 above, Magrathea shall have the right to charge a re-connection fee to cover its administrative expenses.

- 6.8 Termination of this agreement shall include termination of all Schedules hereto.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Except as expressly provided otherwise in this agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one Party to the other Party.

8. DATA PROTECTION

- 8.1 The Customer and Magrathea agree to comply with the data processing terms set out in the Annex.

9. CONFIDENTIALITY

- 9.1 Subject to Clause 9.2 each Party will treat as confidential and procure that its directors, employees, contractors and those of its Associated Companies treat as confidential all information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other Party or relating to this agreement and will not at any time during this agreement and for a period of five years after the termination of this agreement disclose such information to any person firm or company and will not use such information other than for the purposes of this agreement.

- 9.2 The provisions of Clause 9.1 shall not apply to any information:

9.2.1 which is already in the possession of the recipient Party prior to its receipt provided the recipient Party is not bound by any existing obligation of confidentiality in respect of such information;

9.2.2 which was already in the public domain, save as a result of a breach of Clause 9.1;

9.2.3 which is obtained by the recipient from a third party having free right of disposal of such information, save as a result of a breach of Clause 9.1;

9.2.4 the disclosure of which is authorised in writing by the disclosing Party;

9.2.5 where disclosure is required by law, by Ofcom, by Phone-paid Services Authority or by any other relevant regulatory or governmental authority; or

9.2.6 which is properly disclosed in order to obtain or maintain any listing on any recognised stock exchange.

- 9.3 Each Party shall ensure that the confidentiality provisions of this agreement bind all its employees and agents and shall indemnify the other Party against loss or damage suffered as a result of a breach of confidence by employees or agents.

9.4 Magrathea shall have the unconditional and irrevocable right to disclose the identity and address of the Customer and any End User if formally required to do so by Ofcom, Phone-paid Services Authority or any other regulatory or governmental body or any law enforcement agency.

9.5 The provisions of this clause shall survive the termination of this agreement.

10. PROVISION OF SERVICES AND WARRANTIES

10.1 Magrathea cannot and does not guarantee a fault free service. Magrathea gives no warranty that its network or Services shall be continuous, or will be free from faults. Magrathea will, however, make all reasonable endeavours to ensure that the Services are fault free and uninterrupted.

10.2 In addition to Clause 10.1, Magrathea gives no warranty or guarantee that the Service is satisfactory or suitable for the Customer's purposes, or that the Service shall be uninterrupted or fault free. All warranties relating to the Service, including implied warranties, are excluded to the extent permissible by law.

10.3 The Customer acknowledges that:

10.3.1 No representation, warranty or statement, other than detailed in this agreement, constitutes a contract between the Parties, nor has induced the Customer to use the Service provided by Magrathea.

10.3.2 The Service provided by Magrathea was not designed with the Customer's individual requirements in mind, and it is up to the Customer to decide if the Service provided by Magrathea is of satisfactory quality and fit for the purpose for which it is to be used.

10.3.3 Magrathea relies on third parties to deliver calls to and from its network, and therefore Magrathea can have no liability of whatever nature for any delay or failure caused by such third parties.

10.4 In the event that the Customer wishes to provide its own equipment, or provide leased lines to connect to its equipment, this shall require the prior consent of Magrathea, and mutual agreement of any charges that the Customer shall pay to Magrathea. The Customer is solely responsible for any costs in relation thereto including, without limitation, the installation, delivery and maintenance of such equipment. Magrathea shall have no liability whatsoever for any lines or equipment provided at the Site by the Customer.

11. LIMITATION OF LIABILITY

11.1 Except where otherwise expressly stipulated in this agreement the following provisions set out the entire liability of the Parties (including liability for the acts and omissions of its employees, agents, consultants and subcontractors) to each other in respect of:

11.1.1 any delay or default in the provision of the Services by Magrathea;

- 11.1.2 any use made by the customer of the Services; and
- 11.1.3 any representation, statement or tortious act or omission (including without limitation negligence) arising under or in connection therewith.
- 11.2 Nothing in this agreement limits or excludes the liability of either Party:
 - 11.2.1 for death or personal injury resulting from the negligence of that Party or its employees acting in the course of their employment; or
 - 11.2.2 for any loss suffered by one Party as a result of fraud or fraudulent misrepresentation on the part of the other Party.
- 11.3 Subject to Clause 11.2 above neither Party shall be liable for any indirect, incidental, special, consequential or pure economic loss, costs, damages, charges or expenses of the other Party.
- 11.4 Subject to Clause 11.2 above Magrathea shall not be liable for:
 - 11.4.1 interrupted communications; or
 - 11.4.2 loss or corruption of data or information; or
 - 11.4.3 any delay in the provision of the Service or in rectifying a fault with the Service.
- 11.5 Subject to Clause 11.2 above, the total liability of each of the Parties to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to £50,000 for any one event or series of events.
- 11.6 Subject to Clause 11.2 above, neither Party shall be liable to the other in respect of any demand or claim made by the other Party or by a third party where:
 - 11.6.1 the demand or claim arises as a result of the other Party's negligence, misconduct or breach of this agreement;
 - 11.6.2 the Party against which the demand or claim is made does not immediately notify the other Party of the claim or loss and in any event within 14 days of receipt of notification of such claim;
- 11.7 In the event of any demand made or proceedings brought by a third party in relation to the provision of the Services:
 - 11.7.1 the defending Party shall be given sole authority to defend or settle the claim and the other Party shall not admit liability or agree any settlement or compromise of any claim without the defending Party's prior written consent;

- 11.7.2 the defending Party shall be given all co-operation and assistance as may be reasonably required from the other Party in connection with such claim or proceedings;
- 11.7.3 both Parties shall use reasonable endeavours to mitigate and minimise any and all costs and/or losses incurred in relation to the defence of a claim against the other Party.
- 11.8 The provisions of this Clause 11 shall apply notwithstanding termination or expiry of this agreement.

12. INDEMNITY

- 12.1 Without prejudice to any other indemnity referred to in this or any other agreement, the Customer agrees to indemnify Magrathea and its Associated Companies, officers and employees against any claim or demand, including any made by a third party, arising out of the Customer's or its End User's use of the Services and all costs relating thereto.
- 12.2 The Customer agrees to indemnify Magrathea, and its Associated Companies, officers and employees against any claim or demand arising from any act of the Customer or third party including but not limited to any claim in relation to
- 12.2.1 a breach or allegation of breach of the terms of this agreement;
- 12.2.2 negligence, misconduct or any allegation of negligence or misconduct on the part of the Customer or any third party;
- 12.2.3 marketing or promotional activities undertaken by or on behalf of the Customer;
- 12.2.4 the service content provided or marketed by or on behalf of the Customer.

13. FORCE MAJEURE

- 13.1 Magrathea shall not be liable for any interruption, delay or failure in service resulting from any matter or event outside of its control including but not limited to any act of God, inclement weather, storm, flood, drought, lightning, fire, war, military operations or riot, power failure, shortage of power, disturbance to power supplies, disconnection damage or disturbance to telecommunications connections and cables, trade dispute, government action, embargoes, damage to or loss of equipment or interruption, disruption, cease, failure or delay in any service provided to Magrathea by any third party, including any governmental or regulatory authority or any provider of electronic communications networks or services.

14. GENERAL

- 14.1 This agreement, along with the Annex, the Schedules, Rate Sheets, Price Lists and any covering letter, represents the entire understanding between the two Parties and supersedes all previous agreements between the Parties relating to its subject matter.

- 14.2 Each Party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in this agreement.
- 14.3 A Party's rights and powers under this agreement are not affected if it fails to or chooses not to enforce any of them at any time. If any part of this agreement is not enforceable it will not affect the remainder.
- 14.4 All notices shall be sent in accordance with Clause 16. The Parties must notify each other in writing of any change of address.
- 14.5 English Law applies to this agreement, the Annex and all of the Schedules. Both Parties hereby submit to the exclusive jurisdiction of the English Courts.
- 14.6 Both Parties agree that they have no joint venture, partnership, or agency relationship as a result of this agreement. Neither Party shall make any offer, guarantee, or warranty to any third party, in regard to the Services, that purports to bind the other Party.
- 14.7 No waiver by either Party to enforce its rights in relation to any breach of this agreement shall be considered as a waiver of such rights relating to any subsequent breach of the same or any other provision.
- 14.8 Magrathea may vary any provision in this agreement, without the Customer's prior consent if such change is required because of regulatory, insurance, safety or statutory changes made after the date of this agreement. Magrathea shall in such circumstances give the Customer 30 days' notice of such variation where possible.
- 14.9 If Magrathea wishes to vary any provision of this agreement for any other reason it shall give the Customer 30 days' notice of the change and if the effect of the change is a material disadvantage to the Customer, the Customer may (within 14 days of the date on which it receives Magrathea's notice) terminate this agreement by giving Magrathea at least 30 days' notice in which case this agreement shall terminate with effect from the end of the period of the Customer's notice provided always that if the Schedule for any Service is subject to a minimum term, such Schedule will remain operative until such time as the minimum term expires.

15. NON SOLICITATION

- 15.1 During the term of this agreement and for a further period of 12 months after its termination howsoever caused, neither Party will employ or entice to leave or otherwise contract with staff or properly contracted agents of the other Party without prior written consent of the first Party upon each occasion.
- 15.2 In the event that a Party breaches the above clause, then the Party in breach will pay the other by way of liquidated damages an amount equal to one-half of the final gross salary or gross commission as the case may be of the other person so employed engaged or contracted. The Parties hereby acknowledge and agree that this formula is a reasonable assessment of the

costs or loss of income which would be incurred as a result of the other Party's breach.

16. NOTICES

16.1 Any notice or other document to be given to a Party under or in connection with this agreement shall be in writing and shall be sent by first class post, facsimile message or Email to the other Party at the address, fax number or Email address specified in this clause or notified to the other Party from time to time.

16.2 The addresses for delivery of a notice are as follows:

Magrathea Telecommunications Limited	
For the Attention Of: Commercial Department	For the Attention Of:
Address: 5 Commerce Park Brunel Road Theale Berks RG7 4AB	Address:
Fax Number: 0845 004 0041 (+44 118 321 0301)	Fax Number:
Email Address: sales@magrathea-telecom.co.uk	Email Address:

16.3 Any such notice or document shall be deemed to have been served:

- 16.3.1 if sent by facsimile, upon receipt of the appropriate answerback code; or
- 16.3.2 if posted, on the fifth business day following that on which the envelope containing the same shall have been put into the post; or
- 16.3.3 if by Email, at the time and date specified on the Email, subject to confirmation of receipt by a Magrathea employee.

16.4 To prove delivery, it is sufficient to prove that:

- 16.4.1 if sent by post, the envelope containing such notice or document was properly addressed and posted as a pre-paid first class letter;
- 16.4.2 if sent by fax, the notice or document was transmitted by fax to the fax number of the Party; or
- 16.4.3 if sent by Email, that the correct Email address was used as specified by the other Party for receipt of notices and receipt was acknowledged by a Magrathea employee.

17. ASSIGNMENT

17.1 Neither Party shall be entitled to assign, novate or transfer this agreement nor any of its rights or obligations hereunder without the prior written consent of the other Party which shall not be unreasonably withheld (except where such assignment is to an Associated Company or to any third party who has acquired the whole or a substantial part of the assets of the assigning Party, in which case no consent of the other Party shall be required).

18. ELECTRONIC SIGNATURE

18.1 Magrathea and the Customer agree to sign this agreement, the Annex and each of the Schedules by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the Parties' intention to be bound by this agreement, the Annex and the Schedules as if signed by each Party's manuscript signature.

Signed for and on behalf of
Magrathea Telecommunications Ltd

Signature:

Name:

Title:

Date:

Signed for and on behalf of

Signature:

Name:

Title:

Date: