



MASTER SERVICES AGREEMENT

UPDATE: FEBRUARY 2021

Epsilon Master Services Agreement

Definitions

"Agreement" means this Epsilon Master Services Agreement along with the Service Order Form and associated schedules and terms including Service Schedules.

"Claim Year" means a period of three hundred and sixty-five (365) days commencing on the date of an incident or the first day of a series of incidents for which Epsilon is liable to Customer.

"Customer" refers to the company named in the Service Order Form.

"Customer's Premises" refers to the premises owned and/or operated by Customer where the Services shall be performed or where any Epsilon equipment shall be installed.

"Epsilon" refers to any of the Epsilon entities as set out in Schedule 1, its affiliates and its trading names.

"Initial Term" means the minimum period of time Customer has agreed to receive and pay for the Services as defined in the Service Order Form. Where not defined, the Initial Term shall be for twelve (12) months.

"Services" means the service(s) described in this Agreement.

"Service Credits" means credits to be applied to Customer's next invoice.

"Start Date" means the target date for the commencement of the Services.

"Service Schedules" means the specific terms, Services description and Service Level Agreement (SLA) for the specific Services identified in a Service Order Form.

1. Commencement, duration and renewal

- 1.1 This Agreement commences on the date the Services are delivered by Epsilon or the date on which Customer signs the Service Order Form, whichever is earlier. This Agreement will apply during the Initial Term and thereafter be automatically renewed for twelve (12) months ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term, unless terminated either by Customer or Epsilon in accordance with the terms herein.
- 1.2 Unless Customer gives no less than thirty (30) days' notice in writing to terminate the Services or modify the duration of the new term before the expiry of the relevant Initial Term, the contract for the Services shall automatically renew and shall continue upon the expiry of the relevant Initial Term at Epsilon's then current rates and charges for a new term equal to the relevant Initial Term. This automatic renewal and continuation of the Service(s) shall apply on each anniversary of the relevant Initial Term(s) until terminated in accordance with this Agreement.

2. Provision of the Services

- 2.1 Where Customer requests for a site survey or Epsilon requires one to be done, Customer shall pay for all associated charges relating to such site survey.
- 2.2 If the result of the site survey is that additional infrastructure is required for Epsilon to provide the Services, Epsilon shall advise Customer of the additional costs payable. If Customer is not agreeable to pay these additional costs, the Service Order Form shall terminate, and Epsilon shall invoice Customer for all reasonable costs incurred by Epsilon up to the date of termination of the Service Order Form.
- 2.3 Except as set out in this Agreement, Customer is responsible for providing all necessary software, hardware or other facilities required for making use of these Services. Customer shall, at its sole cost and expense, procure and maintain for the duration of the Initial Term (and Extended Term, if applicable) all necessary cables and/or connections. If Epsilon is required by Customer or any third party to procure and maintain such cables on Customer's behalf, Customer shall reimburse Epsilon for all costs and expenses incurred in connection with the procurement, maintenance and/or cancellation of such cables.
- 2.4 Customer shall be responsible to obtain all necessary approvals, permits or authorisations from the relevant authorities or its building owner/ landlord/ management or other approving bodies for its use of the Services and all matters relating thereto including but not limited to connection, installation and/or laying of cables from Epsilon's hand-off point to Customer's Premises. If Customer fails to obtain such approval, permit or authorisation and attempts to cancel the Services, Clause 8.2 shall apply.
- 2.5 Time for the delivery, provision or completion of the Services is not of the essence and shall not be made so by the service of any notice. Epsilon will use reasonable endeavours to begin providing the Services by the Start Date. However, these are not guaranteed and Epsilon will not be liable for any failure to meet the Start Date, unless otherwise provided for in the applicable Service Schedule.
- 2.6 Upon Epsilon notifying Customer that the Services are ready for use, Customer shall have seventy-two (72) hours to test the Services to confirm acceptance or report the Services as faulty. If Customer confirms acceptance of the Services within seventy-two (72) hours, Epsilon shall commence providing the Services. If Customer does not notify Epsilon in writing of any service failures within seventy-two (72) hours, then upon expiry of the said seventy-two (72) hours: (i) the Services shall be deemed accepted by Customer; and (ii) Epsilon shall commence providing the Services.
- 2.7 Epsilon will provide the Services set out in Agreement to Customer with reasonable skill and care and in accordance with the provisions of this Agreement.

- 2.8 Epsilon cannot guarantee that Services will be fault free. If any fault occurs, Customer shall report the fault immediately to Epsilon and Epsilon will use reasonable endeavours to rectify the fault as soon as reasonably practicable. Epsilon will aim to provide regular updates and restore the Services in accordance with the Epsilon Services Handbook.
- 2.9 Subject to the provisions of the applicable Service Schedule, Customer may apply for Service Credits in the event of any fault in the Services. Any award of Service Credits shall take into account the time lost as a result of any Customer delay, which may include (but is not limited to) any delay in Customer response or delay in providing access to Customer's facilities.
- 2.10 Service Credits are not applicable to outages caused by faults identified as being beyond the demarcation points defined in this Agreement.
- 2.11 When Customer reports a fault and no fault is found, and if further investigation is requested by Customer and it is concluded that there was no fault, Epsilon reserves the right to charge Customer for all reasonable costs and expenses incurred and Customer agrees to pay such charges forthwith.
- 2.12 Subject to the relevant notice period stipulated in the applicable Service Schedule, Epsilon may suspend Services where necessary for operational reasons such as repair, maintenance or improvement of the Services, because of an emergency or where Customer is in breach of this Agreement. If the applicable Service Schedule does not expressly stipulate the duration of such notice period, Epsilon will use reasonable endeavours to provide Customer with as much notice as possible of any periods of planned downtime by contacting Customer accordingly.
- 2.13 Epsilon may, for any reason, change any specifications of the Services.

3. Equipment

- 3.1 Any equipment supplied with these Services remains Epsilon's property, unless otherwise stipulated.
- 3.2 Where Customer's equipment is located at Epsilon's site, Customer agrees to maintain:
- 3.2.1 Insurance covering the full replacement value of the equipment and Epsilon's site against fire, theft, accidental damage;
- 3.2.2 Public liability insurance of not less than \$2,500,000 US Dollars (or local equivalent) per annum; and
- 3.2.3 Any licenses therefor and ensure Customer complies with any laws, regulations or other rules relating to its equipment and software.
- 3.3 Customer indemnifies Epsilon against any claims, proceedings or threatened proceedings from any third party arising from Epsilon's possession or use of Customer's equipment, and for any costs arising in investigating or defending itself in relation to any such claims.
- 3.4 Epsilon has a lien over any Customer equipment to secure any fees unpaid under this Agreement. Customer shall not be entitled to remove any equipment until such fees are paid in full.
- 3.5 Epsilon may relocate Customer's equipment on giving reasonable notice.

4. Fees

- 4.1 Customer agrees to pay charges as set out in the Service Order Form. Installation charges are invoiced immediately. Recurring charges (whether Monthly, Quarterly or Annual Recurring Charges) are invoiced in advance from the date that any part of the Services are made available to Customer (such date to be confirmed upon commencement of Services) or at such date as Epsilon may deem appropriate.
- 4.2 Subject to Clause 8.3, Epsilon may change the charges, Services or technical specifications or the provisions of this Agreement upon giving 30 days' notice to Customer either:
- 4.2.1 After the Initial Term; or
- 4.2.2 In the event of any change to taxes, laws, regulations or applicable third-party terms having a material effect on the cost of providing the Services.
- 4.3 Customer agrees to pay invoices that Epsilon sends to Customer within: (i) seven (7) days of the date of invoice for Non-Recurring Charges and installation charges; and (ii) thirty (30) days of the date of invoice for all other charges and fees.
- 4.4 If Customer reasonably and in good faith disputes an invoice or part of it, Customer shall, within sixty (60) days of the date of the invoice: (i) notify Epsilon of such dispute in writing; and (ii) provide to Epsilon all relevant documents, details and explanations in support of such dispute. Otherwise, Customer shall be deemed to have unequivocally accepted the contents of such invoice.
- 4.5 Epsilon's charges are exclusive of VAT or other applicable taxes. Customer is responsible for payment of any such tax.
- 4.6 If Customer fails to pay within the agreed time period Epsilon may:
- 4.6.1 Charge interest at a rate of 1.5% per month, calculated daily until the full amount is received whether before or after any judgment; and/or
- 4.6.2 Immediately suspend or terminate Services.
- 4.7 Epsilon may charge Customer a reasonable administrative fee in respect of any cheques or direct debits returned unpaid by Customer's bank and any credit card payments returned unpaid.
- 4.8 Where Service Credits are issued to Customer, Epsilon shall be entitled to deduct that amount from any amounts owing to Epsilon by Customer.
- 4.9 In addition to Customer's obligations hereunder, all payments to be made by Customer under this Agreement shall be paid free and clear of any deductions, withholdings for, or on account of, tax, set-offs or counterclaims,

except any deduction or withholding which is required by law, in which case, the sum payable by Customer in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, Epsilon receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received had no such deduction or withholding been made or required to be made.

- 4.10 Notwithstanding anything to the contrary in this Agreement and to the extent legally permissible under the applicable laws, Epsilon shall be entitled to set-off any and all amounts owing by Customer to Epsilon against any monies owing by Epsilon to Customer whether under this Agreement or otherwise, and Customer should be responsible to pay such balance amount remaining unpaid to Epsilon following such set-off by Epsilon.

5. Customer use of the Services

- 5.1 Customer must not use the Services:
- 5.1.1 In a way that is immoral, dishonest, unlawful or fraudulent;
 - 5.1.2 To deliver, knowingly receive, upload, download, use or re-use any information or material which is abusive, defamatory, obscene or menacing, or in breach of any copyright, privacy or any other rights;
 - 5.1.3 To send or to promote the sending of any unsolicited spam, advertising or promotional materials; and/or
 - 5.1.4 In a way which infringes any third party's intellectual property rights.
- 5.2 Customer shall be responsible for and indemnify Epsilon for any losses, expenses, claims or other costs incurred by Epsilon that are caused by Customer's breach of Clause 5.1. Epsilon shall notify Customer of any such claims or proceedings and inform Customer regularly as to the progress of such claims or proceedings.
- 5.3 Customer shall:
- 5.3.1 Use appropriate security precautions in connection with its use of the Services;
 - 5.3.2 Comply with all applicable laws, rules, regulations, mandatory guidelines and codes;
 - 5.3.3 Comply with all reasonable directions by Epsilon regarding the use of the Services which are necessary in the interests of ensuring safety or quality of service to Epsilon's other customers.
 - 5.3.4 Provide such information, documents, resources, materials and assistance in a timely manner as Epsilon shall reasonably require to perform the Services at no charge to Epsilon; and
 - 5.3.5 Provide Epsilon with reasonable assistance in investigating the cause of Service outages, security problems and any suspected breach of this Agreement by Customer at no charge to Epsilon.
- 5.4 Where it is reasonably necessary for Epsilon, its subcontractors or agents to attend Customer's Premises in order to perform any part of the Services, Customer shall, at no cost to the aforementioned parties:
- 5.4.1 Provide them with reasonable access to Customer's Premises at times to be agreed, such access not to be unreasonably delayed or withheld;
 - 5.4.2 Inform them of all health and safety rules and regulations and any other reasonable security requirements that apply at Customer's Premises;
 - 5.4.3 Ensure that any Customer equipment made available to them is in good working order, suitable to the purpose for which it is used, and confirms to all relevant standards;
 - 5.4.4 Ensure that Customer's Premises are safe; and
 - 5.4.5 If required by Epsilon, prepare Customer's Premises in accordance with Epsilon's reasonable instructions.
- 5.5 In the event that Epsilon has ordered third party equipment and/or assistance on behalf of Customer as a result of any part of the Services ordered by Customer, then Customer shall be liable for all costs arising from Customer's failure to provide access to Customer's Premises on the dates and at the times agreed by the parties.

6. Intellectual Property, Confidentiality

- 6.1 All intellectual property rights in equipment, hardware or software provided or supplied by Epsilon pursuant to this Agreement will remain with Epsilon or its licensors.
- 6.2 Customer warrants that Customer is entitled to use any trade or service mark or name that Customer is seeking to use in any of Epsilon's Services.
- 6.3 Neither party will disclose to any third party without the other party's prior written consent any confidential information, logins, passwords, service specifications or pricing relating to the Services.

7. Limitation of liability

- 7.1 Epsilon's liability for all matters arising from Epsilon's negligence or otherwise on which Customer may rely on is limited to \$300,000 US Dollars (or local equivalent) per Claim Year. This excludes death and personal injury caused by negligence to the extent that it cannot be excluded by law.
- 7.2 Epsilon's liability to issue Service Credits will be the maximum extent of Epsilon's liability and Customer's exclusive remedy for any failure of the Services.
- 7.3 Epsilon's liability to Customer for any incident or series of incidents shall be limited to the fees paid or payable under this Agreement for that relevant month. Service Credits paid or credited to Customer shall be taken into account in the computation of Epsilon's maximum liability.
- 7.4 Epsilon shall not have any liability in contract or tort (including negligence) arising out of or in connection with this Agreement (including any collateral contract) for any indirect, special, incidental or consequential loss or damage or for any of the following, in each case direct or indirect: (a) loss

of profits; (b) business interruption; (c) loss of business opportunities; (d) loss of revenue; (e) loss of anticipated savings; (f) wasted expenditure; (g) loss of goodwill; (h) loss of reputation; (i) economic loss; or (j) any loss or corruption or destruction of data.

- 7.5 Epsilon is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities including the internet not under Epsilon's control. Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.6 Customer acknowledges that Epsilon has no control over the information transmitted to or from the Services and that Epsilon does not ordinarily examine the use to which customers put the Services or the nature of the information they are sending or receiving whilst using the Services. Epsilon hereby excludes all liability or any kind arising from the transmission or reception of information of whatever nature through the Services to the fullest extent permissible by law.
- 7.7 Customer will indemnify Epsilon against any cost or claim made to Epsilon by any third party as a result of the actions or omissions of Customer's employees, contractors and/or agents when using these Services or resulting directly or indirectly from a failure of these Services or Customer's use of these Services.
- 7.8 Epsilon is not liable in contract or tort or otherwise for any acts, omissions or defaults of Customer or any third party.
- 7.9 Epsilon is not liable for ensuring Customer meets any obligation between Customer and any partners, or other third party Epsilon may connect to.

8. Cancellation, Suspension, Termination

- 8.1 Subject to Clause 8.2, either party may terminate this Agreement at any time on giving ninety (90) days' notice to the other. Customer must pay the fees up to and including the date of termination for all Services Customer receives from Epsilon.
- 8.2 Where Customer cancels before the commencement of the Initial Term, Customer shall pay to Epsilon all costs and expenses incurred by Epsilon and fifty percent (50%) of the Service charges that would have been due up until the end of the Initial Term. Where Customer cancels during the Initial Term or subsequent renewals (as the case may be), Customer shall pay to Epsilon 100% of the Service charges that would have been due up until the end of that relevant period. Customer shall make full payment of all amounts under this Clause 8.2 immediately upon cancellation.
- 8.3 If Customer cancels, upon giving thirty (30) days' notice to Epsilon, as a result of changes (made pursuant to Clause 4.2.2) to this Agreement or Services where such changes had an adverse and material effect on Customer's use of the Services, then Customer will not be liable for any further charges after the date of cancellation.
- 8.4 Customer's failure to pay charges due that are not reasonably in dispute or to comply with its obligations is deemed a material breach for the purpose of termination by Epsilon.
- 8.5 Either party may terminate this Agreement immediately, without notice, if the other party commits a material breach of this Agreement and, where such a breach is capable of remedy, fails to remedy the breach within 14 days of a written notice to do so.
- 8.6 Epsilon may at its sole discretion immediately suspend or terminate this Agreement or suspend the provision of the Services in the event that:
- 8.6.1 Epsilon is directed by any competent authority to cease the Services;
 - 8.6.2 Customer fails to pay the fees where Customer is liable to do so;
 - 8.6.3 Customer uses the Services in breach of this Agreement or otherwise fails to meet Customer's obligations under this Agreement;
 - 8.6.4 Customer use of the Services materially disrupts the provision of Epsilon's services to other customers;
 - 8.6.5 Epsilon is no longer able to provide the Services as a result of change of law, regulation or tax, or where Epsilon's suppliers have terminated the Services; or
 - 8.6.6 Epsilon believes Customer's conduct is likely to result in breach of law or is otherwise prejudicial to Epsilon's interests.
- 8.7 Notwithstanding anything to the contrary in this Agreement, if termination of this Agreement occurs as a result of Clauses 8.4 and 8.5 (except in the event of Epsilon's material breach) or 8.6, Customer will pay all and any charges that would have been due until either the end of the Initial Term or subsequent renewals (as the case may be) or that would have been incurred for ninety (90) days of Services, whichever is the greater.
- 8.8 Upon termination of this Agreement or any of the Services:
- 8.8.1 Customer shall immediately stop using the affected Services and Customer's right to use the affected Service shall immediately cease;
 - 8.8.2 Any licences granted by Epsilon under this Agreement in respect of the affected Services shall terminate;
 - 8.8.3 Customer shall remain liable for all outstanding fees for Services duly performed including any termination or cancellation fees referred to in this Agreement;
 - 8.8.4 Customer shall return all Epsilon equipment used by Customer in respect of the affected Services. If any of Epsilon's equipment is not returned to Epsilon within 5 working days after the date of termination of this Agreement or the applicable Services, Epsilon shall be entitled to invoice Customer for the full market replacement value of such unreturned equipment and Customer shall pay on demand such charges.

9. Warranties

- 9.1 Each party warrants that it has full capacity and authority, all necessary licences, permits and consents to enter into and perform its obligations under this Agreement.
- 9.2 Epsilon does not warrant that Customer's use of the Services will be uninterrupted or error-free, or that the Services or the information obtained by Customer through the Services will meet Customer's requirements.
- 9.3 Customer warrants that neither itself nor any of its directors, shareholders, officers, employees, agents or subcontractors will make or offer, has made or offered, or caused to be made or offered, any payment, loan of gift of money or anything of value in connection to any party to influence any decision or gain any advantage in connection with any transaction relating to this Agreement that could result in a violation of specific anti-corruption legislation ("**Anti-Corruption Legislation**") as set out in Schedule 1 and any other law, regulation, order, decree or directive having the force of law and relating to bribery, kick-backs or similar business practices. Any breach of this clause shall be considered a material breach of this Agreement not capable of remedy and shall be cause for immediate termination of this Agreement.
- 9.4 Save as expressly set out in this Agreement, all conditions, warranties, representations, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded to the fullest extent permissible by law.

10. Publicity

- 10.1 Where Customer orders or uses Epsilon Services, Customer agrees and consents that Epsilon shall be allowed to publish Customer's trade or service name, mark and/or logo (together with any relevant information where appropriate) within its online portal, website, digital documentation and print based commercial collateral.
- 10.2 Customer agrees and consents that Epsilon shall be allowed to inform Customer's employees and representatives about its service offerings via e-mail or normal mail communication.

11. Force Majeure

- 11.1 Neither party will be liable to the other for any failure to deliver the Services, or for any breach by it, of this Agreement, where such failure or breach is due to a reason outside the reasonable control of such party, including, but not limited to, any act of God, inclement weather, flood, drought, lightning, fire, strike, lock-out, war, military operations, riot, failure of a third-party telecommunications provider or breakdown of any equipment not supplied by Epsilon.

12. General Provisions

- 12.1 This Agreement supersedes all prior agreements or undertakings between the parties and constitutes the entire agreement and understanding between the parties in respect of the matters set out in this Agreement.
- 12.2 This Agreement does not create any rights or other benefits enforceable by any person who is not a party to this Agreement, and shall exclude the application of specific legislation ("**Excluded Legislation**") as set out in Schedule 1.
- 12.3 Either party must act upon a breach of this Agreement by the other party within two (2) years of the date when that party became aware, or ought to have been aware, of that breach, whichever is earlier, failing which the other party shall not be liable for such breach.
- 12.4 Each provision of this Agreement operates separately if any provision of this Agreement is deemed to be invalid such part will be deemed not to form part of this Agreement and the remainder of this Agreement shall not be affected.
- 12.5 This Agreement is subject to the Service Order Form, Service Schedules, Acceptable Use Policy, and any relevant documents which may be revised from time to time by Epsilon at its sole discretion. In the event of any conflict or inconsistency between any provision of any document forming part of this Agreement, the following order of precedence shall prevail to the extent necessary to resolve such conflict or inconsistency:
 - (1) Service Order Form(s);
 - (2) Service Schedule(s);
 - (3) Channel Partner Schedule(s) (where applicable);
 - (4) Acceptable Use Policy;
 - (5) this Master Services Agreement; and
 - (6) any other document or any terms expressly incorporated as part of this Agreement.

- 12.6 All references to the Service Order Form in this Agreement shall apply, where appropriate, to orders made through Infiny, Epsilon's on-demand connectivity platform.

13. Notices

- 13.1 Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via facsimile, courier, electronic mail (if an e-mail address is provided) or sent by postal delivery service, at such address stipulated on the Service Order Form, or as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. All such notices shall be deemed to have been given on (i) the date delivered if delivered personally, (ii) the third business day after posting if sent by the applicable postal delivery service, or (iii) the date of transmission if delivered by facsimile or electronic mail (or the business day after transmission if transmitted on a weekend or a legal holiday).
- 13.2 Unless otherwise stipulated in the Service Order Form or otherwise agreed between the parties, such notices must be sent to the Chief Executive Officer, Chief Commercial Officer or Chief Financial Officer of the parties.

14. Assignment

- 14.1 Epsilon may assign, sub-contract or otherwise deal with its rights, obligations and/or contracted services under this Agreement at its discretion.
- 14.2 Epsilon may, at any time, deliver any Service or any part of its Services in part or in whole via any network, infrastructure and/or equipment owned or operated by any third party and used by Epsilon to deliver its Services.
- 14.3 Customer may not assign, sub-contract, sell or transfer Customer's rights or obligations under this Agreement without Epsilon's prior written consent.
- 14.4 This Agreement shall be binding upon and inure to the benefit of all successors and permitted assigns of Epsilon and Customer, which will be bound by all of the obligations of their predecessors or assignors.

15. Law

- 15.1 Unless otherwise stipulated in the Service Order Form or otherwise agreed between the parties, the applicable governing law of this Agreement and submission to exclusive jurisdiction of the courts shall be as set out in Schedule 1.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of this _____ day of _____ 2021.

Duly signed by the authorised signatory for and behalf of:
Epsilon

Name :
Title :
Date :

Duly signed by the authorised signatory for and behalf of:
Customer

Name :
Title :
Date :

SCHEDULE 1

Epsilon, shall, in its sole discretion, determine the specific Epsilon entity (from the following table) that shall enter into this Agreement with Customer, having regard to the country where the Services are to be provided and all other relevant factors:

Epsilon Entity	Governing Law / Courts	Excluded Legislation	Anti-Corruption Legislation
Epsilon Telecommunications Limited	English Law / Courts of England	Contracts (Rights of Third Parties) Act 1999	US Foreign Corrupt Practices Act & UK Bribery Act 2010
Epsilon Telecommunications (SP) Pte Ltd	Laws of Singapore / Courts of Singapore	Contracts (Rights of Third Parties) Act	Prevention of Corruption Act & Penal Code
Epsilon Telecommunications (HK) Limited	Laws of Hong Kong / Courts of Hong Kong		US Foreign Corrupt Practices Act & UK Bribery Act 2010
Epsilon Telecommunications (US) Pte Ltd	Laws of State of New York / Courts of Nassau County, New York, USA (excluding conflict of laws principles)		US Foreign Corrupt Practices Act & UK Bribery Act 2010
Epsilon US Inc.	Laws of State of New York / Courts of Nassau County, New York, USA (excluding conflict of laws principles)		US Foreign Corrupt Practices Act & UK Bribery Act 2010