

# Epsilon Telecommunications Standard Terms & Conditions

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## Definitions

**"Affiliate"** means in relation to either Party, any company or other entity which directly or indirectly controls, is controlled by or is under joint control with either Party. For this purpose, control means that Party or a company or entity controlling that Party if it (a) owns, directly or indirectly, at least fifty (50) percent of the capital of the other company or Party, as the case may be, or (b) in the absence of such ownership interest, substantially has the power to direct or cause the direction of the management and set the policies of such Party, company or entity. Any direct or indirect subsidiary of an Affiliate shall be deemed to be an Affiliate for the purpose of this definition.

**"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.

**"Confidential Information"** means in relation to the Services, any information, including without limitation, information of commercial, technical or financial nature which contains among other matters, discoveries, ideas, concepts, know-how, techniques, designs, samples, software, specifications, drawings, blueprints, computer programs and documentation, proposals, patent applications, business information, strategic and development plans, employee lists, business manuals, marketing plans, technical or financial information whether conveyed as communications or data in oral, written, graphic, or electromagnetic form or otherwise, and all other information which may be disclosed by the disclosing party or to which the receiving party may be provided access by the disclosing party which is not generally available to the public or not already known to the receiving party at the time of disclosure by the disclosing party.

**"Competent Authority"** means any government authority or agency which has jurisdiction over either or any of Epsilon, the Customer and/or the subject matter of any Service Agreement.

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

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

**Data Protection Legislation:** means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (as defined below, including, without limitation, the privacy of electronic communications).

**"Downgrade"** means, in relation to the Services, a variation of an existing Service Agreement or the substitution of an existing Service Agreement where the monthly recurring charges of the varied/substituted Service Agreement are lower than the monthly recurring charges of the original Service Agreement.

**"EEA"** means the European Economic Area.

**"Epsilon"** refers to any of the Epsilon entities as set out in Schedule 1, its Affiliates and its/their (respective) trading names.

**"Force Majeure Event"** shall have the meaning as stated in Clause 11 below.

**"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.

**"Non-Standard Services"** means any Services which are ancillary or related to the telecommunications Services ordinarily provided Epsilon but are not actually telecommunications Services by nature.

**"OEM"** means the original equipment manufacturer.

**"Party"** means either Epsilon or Customer and **"Parties"** means both Epsilon and Customer.

**"STC"** means these Epsilon Telecommunications Standard Terms & Conditions.

**"Service Agreement"** means these Epsilon Telecommunications Standard Terms & Conditions along with the Service Order Form and associated schedules and terms including Service Schedules.

**"Services"** means the service(s) and/or goods described in a Service Agreement.

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

**"Start Date"** means the non-binding, estimated target date for the commencement of the Services.

**"Service Order Form"** means the Epsilon service order form for the Service(s) agreed by the Parties which sets out the details of the Service(s) ordered, including the applicable charges for the Service(s).

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

**"Upgrade"** means, in relation to the Services, a variation of an existing Service Agreement or the substitution of an existing Service Agreement where the monthly recurring charges of the varied/substituted Service Agreement are higher than the monthly recurring charges of the original Service Agreement.

**"UK GDPR"** shall have the same meaning as defined in ss. 205(4) and (5) of the United Kingdom's Data Protection Act 2018.

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## 1. Commencement, Duration and Renewal

- 1.1 Each Service Agreement shall start on the date the Services are delivered by Epsilon or the date on which Customer signs the Service Order Form, whichever is earlier. Unless stated otherwise in the Service Order Form, the Service Agreement will remain effective during the Initial Term and thereafter automatically renew for the same duration as the Initial Term, unless terminated either by Customer or Epsilon in accordance with the terms herein or by operation of law, whichever occurs first.
- 1.2 Customer shall give Epsilon no less than ninety (90) days' written prior to the expiry of the Initial Term in order to prevent the automatic renewal from taking effect. Where Customer fails to give timely notice of non-renewal, any such attempts to terminate shall be subject to the provisions of these STC.

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## 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 the Service 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 any extension thereto, 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 pay additional charges for any patching request equivalent to a minimum of two (2) hours remote hands charges subject to Epsilon's availability and price revisions from time to time. All cabling provided for or on behalf of the Customer shall be and remain the sole responsibility of the Customer.
- 2.5 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.
- 2.6 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 to Customer for any failure losses incurred by Customer for failure to meet the Start Date, unless otherwise provided for in the applicable Service Schedule. In any event, Customer shall use best endeavours and shall work together with Epsilon in good faith with the view to having the Services ready by the Start Date.
- 2.7 Where Customer delays the Start Date by up to and including six (6) months from the original Start Date, Customer shall be liable to Epsilon for any and all costs and expenses incurred by Epsilon in connection with the Services. For avoidance of doubt, this Clause 2.7 shall also apply whenever there are any further delays to the Start Date requested by Customer after the initial delay.
- 2.8 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.
- 2.9 Epsilon will provide the Services set out in the Service Agreement to Customer with reasonable skill and care and in accordance with the provisions of the Service Agreement.
- 2.10 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.
- 2.11 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.
- 2.12 Service Credits are not applicable to outages caused by faults identified as being beyond the demarcation points defined in a Service Agreement.
- 2.13 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.
- 2.14 Except where a notice period is stipulated in an 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 the Service 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.
- 2.15 Epsilon may change any specifications of the Services in the event of any change to taxes, laws, regulations or applicable third-party terms having a material effect on the Services. Where reasonably practicable, Customer may be given notice of such changes.

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### **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 shall be liable for all loss and/or damage howsoever caused by Customer's equipment and must, for so long as Customer's equipment remains at Epsilon's site, 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 in connection with any Service 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.
- 3.6 Upon the expiry of the Initial Term (or any extensions thereto), Customer shall remove its equipment from the site within five (5) days. If Customer fails to remove its equipment within the specified timeframe above, Customer shall be deemed to have abandoned to Epsilon the equipment that has not been promptly removed. Consequently, Epsilon shall have the absolute right to dispose of the abandoned equipment, to retain any proceeds thereof and where applicable, to charge Customer for any costs and/or expenses incurred as a result of having to store the equipment prior to disposal and of the disposal itself. In the event that there are any proceeds from the disposal of the abandoned equipment, Epsilon shall have the right but shall not be obliged to set-off the disposal proceeds against any amounts due and owing by Customer.

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### **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 any Service 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 thirty (30) days of the date of invoice for all charges and fees. Customer's obligation to pay any invoice by its due date is a condition and Customer's failure to pay any invoice by the due date shall be regarded as the Customer's breach of the Service Agreement to which the invoice relates.
- 4.4 If Customer reasonably and in good faith disputes (with valid and sufficient grounds) an invoice or part of it, Customer shall before the invoice due date: (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 and shall be liable to make payment of the same in full to Epsilon within thirty (30) days from the date(s) of any such invoice.
- 4.5 Where Customer fails to act in accordance with Clause 4.4(i) and (ii), Customer shall forever lose its right to dispute any such invoice.
- 4.6 Epsilon's charges are exclusive of VAT or other applicable taxes. Customer is responsible for payment of any such tax.

- 4.7 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 or such other maximum rate as permitted by law, whichever is higher, calculated daily until the full amount is received whether before or after any judgment or award; and/or
  - 4.6.2 Immediately suspend or terminate Services.
- 4.8 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.
- 4.9 Where Service Credits are issued to Customer, Epsilon shall be entitled to deduct that amount from any amounts owing to Epsilon by Customer.
- 4.10 In addition to Customer's obligations hereunder, all payments to be made by Customer in respect of any Service 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.
- 4.11 Notwithstanding anything to the contrary in any Service 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 a Service Agreement or otherwise, and Customer should be responsible to pay such balance amount remaining unpaid to Epsilon following such set-off by Epsilon.
- 4.12 As a condition precedent to the provision of any Services or at any time while a Service Agreement is in force, Epsilon shall have the right to request from Customer and Customer shall provide promptly, reasonable evidence of its creditworthiness. Depending on Epsilon's assessment of the evidence provided by Customer, Epsilon may request additional evidence of Customer's creditworthiness and/or make the (continued) provision of Services subject to such forms of payment security that are reasonably acceptable to Epsilon.

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## **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 advertising/spam 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 a Service 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.

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## **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. For avoidance of doubt, any intellectual property rights, which are not already owned by third parties, arising from the provision of the Services are owned by Epsilon,
- 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 including but not limited to logins, passwords, service specifications or pricing relating to the Services. However, Epsilon may, without Customer's consent, share Customer's confidential information with its employees and such other person(s) for the purpose of delivering the Services to Customer.
- 6.4 Either Epsilon or Customer may disclose Confidential Information where required by any applicable law but prior to such disclosure, the disclosing party shall notify the owner of the Confidential Information of such disclosure and shall provide the owner of the Confidential Information with such information or reasonable assistance in relation to the circumstances giving rise to the disclosure.
- 6.5 For so long as any Service Agreement remains in effect, the confidentiality provisions contained herein shall apply to the terms of or any communications between Epsilon and Customer concerning that Service Order, as well as any other communications between Customer and Epsilon in connection with any other Services, regardless of whether such other Services are within the scope of any such existing Service Order.

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## **7. Limitation of liability**

- 7.1 Epsilon's liability to Customer for any incident or series of incidents shall be limited to the fees paid or payable under a Service Agreement for that relevant month.
- 7.2 Where Epsilon's liability is to issue Service Credits as compensation to a Customer, those Service Credits will be the maximum extent of Epsilon's liability and Customer's sole and exclusive remedy for any failure of the Services.

- 7.3 Notwithstanding the generality of Clauses 7.1 and 7.2, Epsilon's maximum aggregate liability for all matters or claims arising from Epsilon's negligence or otherwise on which Customer may rely is limited to US\$300,000 (three hundred thousand United State Dollars) (or local equivalent) per Claim Year. This excludes death and personal injury caused by negligence to the extent that these cannot be excluded by law. Any 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 a Service 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.
- 7.10 Nothing in this Clause 7 is intended to derogate or be construed as permitting the derogation from either Party's duty to mitigate their respective losses.

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## 8. Cancellation, Suspension, Termination

- 8.1 Subject to Clause 8.2, either Party may terminate a Service 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 (i) all costs and expenses incurred by Epsilon up to and including the date of cancellation, including any waived costs and expenses and (ii) 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 a Service 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 Either party may terminate a Service Agreement immediately, without notice, if the other party commits a material breach of the Service 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.
- 8.5 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.
- 8.6 Epsilon may at its sole discretion immediately suspend or terminate a Service 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 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;
  - 8.6.3 Customer uses the Services in breach of a Service Agreement or otherwise fails to meet Customer's obligations under a Service Agreement;
  - 8.6.4 Customer's use (or the use by a Customer's customer (with directly or indirectly)) of the Services materially disrupts the provision of Epsilon's services to other customers;
  - 8.6.5 Customer fails to pay the fees where Customer is liable to do so; or
  - 8.6.6 Epsilon has reason to believe that Customer's conduct is likely to result in breach of law or is otherwise prejudicial to Epsilon's ability to continue providing the Services to Customer.
  - 8.6.7 Customer files in any court or agency pursuant to any statute or regulation of any state or country a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of the Customer or of substantially all of its assets; or if Customer proposes a written agreement of composition or extension of substantially all of its debts; or if Customer is served with an involuntary petition against it, filed in any insolvency proceeding, and such petition is not dismissed within sixty (60) days after the filing thereof; or if Customer becomes a party to any dissolution or liquidation; or if the Customer makes an assignment of substantially all of its assets for the benefit of creditors.
- 8.7 Where Services have been suspended due to Clauses 8.6.3 to 8.6.7, Customer shall be liable to pay Epsilon a reconnection fee for the resumption of the services.
- 8.8 Either Party shall have the right to terminate a Service Agreement with thirty (30) days' prior written notice if any event falling within the ambit of Clause 11 persists for more than sixty (60) consecutive days.
- 8.9 Where Customer delays the Start Date beyond six (6) months of the original Start Date, the applicable Service Agreement shall be automatically cancelled and in addition to the provisions of this Clause 8, Epsilon's rights under the Service Agreement, at law or in equity, Clause 2.7 shall also apply.
- 8.10 In the event of a Downgrade, Customer shall compensate Epsilon for the based on the following formula:

$$C_{\text{Original}} - C_{\text{New}}$$

Where:

$C_{\text{Original}}$  is the aggregate of all the monthly recurring charges that would have been paid to Epsilon under the original Service Agreement; and  
 $C_{\text{New}}$  is the aggregate of all the monthly recurring charges that will be paid to Epsilon under the varied/substituted Service Agreement.

- 8.11 In the event of an Upgrade, no early termination fee shall be payable by the Customer.
- 8.12 Notwithstanding anything to the contrary in a Service Agreement, if termination of the Service Agreement occurs as a result of Clauses 8.4 (except in the event of Epsilon's material breach), 8.5 or 8.6.3 to 8.6.7, 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.
- 8.13 Upon termination of a Service Agreement:

- 8.13.1 Customer shall immediately stop using the affected Services and Customer's right to use the affected Service shall immediately cease;
- 8.13.2 Any licences granted by Epsilon under the Service Agreement in respect of the affected Services shall terminate;
- 8.13.3 Customer shall remain liable for all outstanding fees for Services duly performed including any termination or cancellation fees referred to in the Service Agreement;
- 8.13.4 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 five (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; and
- 8.13.5 Customer shall remove its equipment from the site not owned or operated by, or licenced to Customer within five (5) working days from the date of termination of the applicable Service Agreement. If Customer fails to remove its equipment within the specified timeframe above, Customer shall be deemed to have abandoned to Epsilon the equipment that has not be promptly removed. Consequently, Epsilon shall have the absolute right to dispose of the abandoned equipment, to retain any proceeds thereof and where applicable, to charge Customer for any costs and/or expenses incurred as a result of having to store the equipment prior to disposal and of the disposal itself. In the event that there are any proceeds from the disposal of the abandoned equipment, Epsilon shall have the right but shall not be obliged to set-off the disposal proceeds against any amounts due and owing by Customer.

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## 9. Warranties

- 9.1 Each Party warrants on a continuing basis that it has full capacity and authority, all necessary licences, permits and consents to enter into and perform its obligations under each Service Agreement. Epsilon shall have the right to request from Customer probative evidence of such licences, permits and consents as a condition precedent to the provision of any Services, in a form reasonably acceptable to Epsilon.
- 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 a Service 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 the Service Agreement not capable of remedy and shall be cause for immediate termination of that Service Agreement.
- 9.4 Save as expressly set out in a Service 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.

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## 10. Data Protection

- 10.1 In this clause 10:  
**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** have the meanings given in the Data Protection Legislation.
- 10.2 In the context of any Services provided by Epsilon, Customer shall be a Controller and Epsilon shall be a Processor for the purposes of processing Protected Data under a Service Agreement. Customer shall at all times comply with all Data Protection Legislation in connection with the processing of Personal Data. The Customer shall ensure all instructions given by it to Epsilon in respect of Personal Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Legislation.
- 10.3 When Epsilon processes Personal Data as the data processor, clauses 10.3 to 10.10 will apply in relation to the Personal Data.
- 10.4 Epsilon shall:
  - 10.4.1 only process the Protected Data in accordance with the Service Agreement except to the extent:
    - 10.4.1.1 that alternative processing instructions are agreed between the Parties in writing; or
    - 10.4.1.2 otherwise required by applicable law (and shall inform Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
    - 10.4.1.3 if Epsilon believes that any instruction received by it from Customer is likely to infringe the Data Protection Legislation it shall be entitled to cease to provide the relevant Services until the Parties have agreed appropriate amended instructions which are not infringing.
- 10.5 Epsilon shall implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
  - 10.5.1 Customer authorises Epsilon to appoint the following categories of Processors of the Personal Data: (i) Epsilon's subcontractors engaged to provide any element of the Services (ii) Epsilon's Affiliates, and (iii) third party providers of the systems that Epsilon uses in the course of providing the Services.
- 10.6 Where requested by Customer and at Customer's cost, Epsilon shall:
  - 10.6.1 assist Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the UK GDPR taking into account the nature of the processing and the information available to Epsilon; and
  - 10.6.2 taking into account the nature of the processing, assist Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the UK GDPR (and any similar obligations under applicable Data Protection Legislation) in respect of any Protected Data.
- 10.7 For the purpose of delivering the Services to Customer, Customer consents to Epsilon transferring Protected Data to countries outside the United Kingdom and the European Union for the purpose of providing the Services, provided all transfers by Epsilon of Protected Data to such recipients are in accordance with such safeguards or other mechanism(s) for transfers of personal data as may be permitted under Data Protection Legislation from time to time. Customer agrees to such transfers and that Epsilon may implement such safeguards by entering into standard data protection clauses authorised under the Data Protection Legislation, which Epsilon may do as agent on behalf of the Customer.
- 10.8 Epsilon shall at Customer's cost and expense refer to Customer all requests it receives for exercising any Data Subjects' rights under Chapter III of the UK GDPR which relate to any Protected Data. It shall be Customer's responsibility to reply to all such requests as required by applicable law.
- 10.9 Upon termination the Services which include the processing of Protected Data, at Customer's cost and at Customer's option, Epsilon shall either return all of the Personal Data to the Customer or securely dispose of the Personal Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Epsilon to store such Protected Data.
- 10.10 Customer shall indemnify and keep indemnified Epsilon against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation) arising out of or in connection with any breach by the Customer of its obligations under this Clause 10.

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## 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 a Service 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 (each a "Force Majeure Event").

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## 12. Miscellaneous Provisions

- 12.1 Each Service 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 that Service Agreement.
- 12.2 A Service Agreement does not create any rights or other benefits enforceable by any person who is not a party to the Service 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 a Service 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 a Service Agreement operates separately if any provision of that Service Agreement or part thereof is deemed to be invalid or otherwise enforceable, such part will be deemed not to form part of the Service Agreement and the remainder of the Service Agreement shall not be affected.
- 12.5 These STC are 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, all of which can be found on Epsilon's website as stated in the Service Order Form.. In the event of any conflict or inconsistency between any provision of any document forming part of a Service 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) these STC; and
  - (6) any other document or any terms expressly incorporated as part of the Service Agreement.
- 12.6 All references to the Service Order Form in these STC shall also apply, where appropriate, to online orders made through Infiny, Epsilon's on-demand connectivity platform.
- 12.7 Epsilon may make prospective changes to these STC as it deems necessary from time to time. Any such prospective changes made will be published on Epsilon's website as stated in the Service Order Form and shall take effect from the date of publication unless stated otherwise on Epsilon's website. For avoidance of doubt, none of these prospective changes shall apply retroactively to any Service Agreements which were already entered into prior to any prospective changes taking effect.
- 12.8 Nothing in these STC are intended to create nor shall be construed as being a partnership, joint-venture or agent/principal relationship between Epsilon and Customer. Neither Party shall have any right to oblige or bind the other Party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third persons.
- 12.9 Should any provision of these STC be determined by any court or tribunal of competent jurisdiction to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.
- 12.10 The rights and remedies contained of each of Epsilon and Customer are cumulative and not alternative. Neither the failure nor any delay by either Party in exercising any right, power, or privilege under these STC, Service Agreement, at law or in equity will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
- 12.11 No variation or waiver of any term of each Service Agreement (which shall include these STC) shall be effective unless it is in writing and signed by the authorised representatives of the parties.
- 12.12 These STC and each Service Agreement (and any such terms incorporated by reference as contemplated by these STC and the relevant Service Agreement, as the case may be) respectively contain the entire agreement and understanding between Epsilon and Customer with respect to the subject matter thereof and supersede all prior and contemporaneous agreements, understandings, inducements, representations and conditions, warranties express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. Customer further acknowledges that it has not been induced to enter into any Service Agreement by any representation, warranty or undertaking not expressly incorporated into it.
- 12.13 To the extent permitted by any applicable law, Epsilon disclaims and excludes all warranties, conditions or other contractual obligations imposed or implied by any applicable statute, at common law (whether in contract or tort (including negligence)), in equity, by trade custom or otherwise.
- 12.14 Where Customer requests and Epsilon agrees to provide Non-Standard Services to Customer, details of such Non-Standard Services shall be set out in the Service Order Form and Customer shall fully indemnify Epsilon in respect of any loss or damage caused to Epsilon by reason of Epsilon agreeing to provide the Non-Standard Services. Customer further avers that it shall not request Epsilon to provide any Non-Standard Services for which a licence or other similar regulatory approval is required in the jurisdiction(s) where the Non-Standard Services are to be provided.
- 12.15 Where the Service is for or includes the sale of goods, title to the goods shall only pass upon full payment for the goods by Customer to Epsilon. Risk in the goods shall pass to Customer when the goods have left the premises of the OEM or the distributor of the goods, whichever is earlier of the two.
- 12.16 Notwithstanding any rule of law to the contrary, where Customer is already in possession of the goods but has failed to pay for the goods despite the price of the goods having already become due and owing to Epsilon, Epsilon shall have the right to maintain an action against Customer for the unpaid price, without prejudice to any other remedies which Epsilon may have under these STC, at law or in equity.
- 12.17 Where Customer takes or already has possession of the goods before title has passed to Customer, Customer shall:
- (1) not deal with or otherwise dispose of the goods *vis-à-vis* any third party (including an Affiliate of Customer) without the express consent of Epsilon;
  - (2) store the goods separately from any other goods belonging to third parties;
  - (3) mark the goods as the property of Epsilon; and
  - (4) with reasonable prior notice from Epsilon, allow Epsilon, its agents or representatives access to Customer's premises to verify that the obligations contained in this Clause 12.17 are being complied with.

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## 13. Notices

- 13.1 Notices hereunder shall be in writing and sufficient and received if delivered in person, or when sent via 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 electronic mail during business hours (or the next business day after transmission if transmitted on a weekend or a public/bank holiday).

13.2 Unless otherwise stipulated in the Service Order Form or otherwise agreed between the Parties, such notices must be sent to either the Chief Executive Officer, Chief Commercial Officer, Chief Financial Officer or similar senior executive of the respective Parties.

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**14. Assignment**

14.1 Epsilon may assign, transfer, sub-contract or otherwise deal with its rights, obligations and/or contracted services under a Service 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 a Service Agreement without Epsilon's prior written consent.

14.4 Each Service Agreement shall be binding upon and inure to the benefit of all successors and permitted assigns of Epsilon and Customer respectively, and such successors and assigns will be bound by all the obligations of their predecessors or assignors.

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**15. Governing Law & Arbitration**

15.1 Unless otherwise stipulated in the Service Order Form or otherwise agreed between the Parties, the applicable governing law of the Agreement and dispute resolution provisions are as set out in Schedule 1.

**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 / Arbitration	Excluded Legislation	Anti-Corruption Legislation
Epsilon Telecommunications Limited	English Law / LCIA Arbitration*	Contracts (Rights of Third Parties) Act 1999	US Foreign Corrupt Practices Act & UK Bribery Act 2010
Epsilon Telecommunications (SP) Pte Ltd	Laws of Singapore generally; English law to apply to clause 10 only / SIAC Arbitration**	Contracts (Rights of Third Parties) Act 2001	Prevention of Corruption Act 1960, Penal Code 1871 & UK Bribery Act 2010, US Foreign Corrupt Practices Act
Epsilon Telecommunications (HK) Limited	Laws of Hong Kong generally; English law to apply to clause 10 only / SIAC Arbitration**	Contracts (Rights of Third Parties) Ordinance (Cap. 623)	Prevention of Bribery Ordinance (Cap. 201), US Foreign Corrupt Practices Act & UK Bribery Act 2010
Epsilon Telecommunications (US) Pte Ltd	Laws of State of New York, USA generally (excluding conflict of laws principles); English law to apply to clause 10 only / ICC Arbitration***		US Foreign Corrupt Practices Act, 18 U.S.C. §201, Travel Act, 18 U.S.C. §§1341, 1343 and 1346, & UK Bribery Act 2010
Epsilon US Inc.	Laws of State of New York, USA generally (excluding conflict of laws principles); English law to apply to clause 10 only / ICC Arbitration***		

\*Any dispute arising out of or in connection with a Service Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration seated in London (UK) under the LCIA Rules in force at the time arbitration proceedings are started, which Rules are deemed to be incorporated by reference into this clause. The language of the arbitral proceedings shall be English.

\*\*Any dispute arising out of or in connection with a Service Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration seated in Singapore and administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") in force at the time when arbitration proceedings are started, which rules are deemed to be incorporated by reference in this clause. The language of the arbitral proceedings shall be English.

\*\*\*All disputes arising out of or in connection with the present contract All disputes arising out of or in connection with a Service Agreement shall be finally settled by arbitration, seated in the city of New York, USA, under the Rules of Arbitration of the International Chamber of Commerce in force at the time arbitration proceedings are started by a sole arbitrator appointed in accordance with the said Rules. The Parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.