

# 1 Telecommunications Services Agreement

---

BETWEEN

1. Databax Ltd whose registered office is at c/o Langtons, The Plaza, 100 Old Hall Street, Liverpool, L3 9QJ, United Kingdom  
(hereinafter called 'Databax') of the one part; and
2. Peritus Consultants Ltd. Company No 07130306. (hereinafter called 'Customer') of the other part.

WHEREAS

- A. Databax is a provider of Telecommunications Services Network
- B. The customer wishes to utilise Databax's services.

IT IS AGREED THAT

## 1. INTERPRETATION AND DEFINITIONS

The following provisions shall have effect for the Interpretation of the Agreement;

- 1.1. Words denoting the singular number only shall include the plural and vice versa, words importing persons include bodies corporate and non-corporate.
- 1.2. The clause headings do not form part of this deed, are for convenience only, and shall not be taken into account in its construction or interpretation.
- 1.3. The 'Act' - the Telecommunications Act 1984.
- 1.4. 'Code' – Any Code of Practice issued by PhonepayPlus (or anybody that shall replace them and any other regulatory body approved by the Director General of Telecommunications) relevant to Services, that may be issued from time to time and any code of practice issued by OFTEL or OFCOM in relation to telecommunication services or the Numbering Code or Numbering Conventions.
- 1.5. 'Email' – Electronic Mail.
- 1.6. 'End User' – users of the services provided by the Customer.
- 1.7. 'Suspect Traffic' - any traffic which BT plc or any Carrier that transmits traffic to Databax or BT plc is unable to bill or collect, or where
  - 1.7.1. there is a reasonable expectation that the End User is not likely to pay their

- telephone bill,
- 1.7.2.calls are being made to inflate payments due from Databax,
- 1.7.3.the traffic being generated is likely to result in Databax incurring a loss in receiving this traffic,
- 1.7.4.traffic that matches the indicators of Artificially Induced Traffic as defined in Annex E of the BT Network Charge Control Standard Interconnect Agreement
- 1.8. ‘PhonpayPlus’ – PhonpayPlus, or any other independent body appointed to supervise and administer telephone information services, and is recognised by the Director General of Telecommunications (or anybody that shall take its place), as an appropriate body to apply and administer the Code. Telecommunications Services Agreement
- 1.9.‘Intellectual Property Rights’ – copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial or intellectual property rights or trade secrets existing at any time in any jurisdiction and all rights that shall apply to them.
- 1.10‘Inbound Channels’ – Lines used to receive inbound calls to Databax’s network.
- 1.11.‘Internet’ – Global telecommunications network.
- 1.12‘Port’ – the transfer of a Service Number to a third party under the Telecommunications (Interconnection) Regulations 1997 (whereby, for explanatory purposes only, that other party provides services to the Customer in place of Databax) and the words “Ports” and “Ported” shall be construed accordingly.
- 1.13‘Rates’ – the rates specified in the attached schedule, and as varied from time to time, which are the rates per minute payable by either party, and these rates are exclusive of value added tax.
- 1.14‘Report’ - is the monthly call statement, produced by Databax and showing call minutes produced on Service Numbers allocated to the Customer or the Customer’s wholesale account.
- 1.15‘Service Numbers’ - Numbers allocated to the customer from time to time, over which the Customer shall not acquire any right, title or interest and ‘Service Numbers’ shall be construed accordingly.
- 1.16‘Site’ – Location where services are provided.
- 1.17‘Follow Me Numbers’ – Numbers supplied by Databax with an 07 prefix.
- 1.18‘Overseas Follow Me Numbers’ - Follow Me Numbers set up by Databax specifically to receive calls from outside the United Kingdom.
- 1.19‘Charges’ – means Databax’s applicable charges for the provision of Services notified

to the Customer from time to time.

1.20 'Product' – means the service to be used on Databax's Service.

1.21 'Service' – means the provision of connection between Databax and Customers equipment.

## 2. FORMATION OF CONTRACT

2.1. Any error, omission or typographical error in any quotation, offer, sales information, invoice, or document supplied by Databax shall be subject to correction on notice from Databax and without liability.

2.2. Databax may vary any provision in this Agreement, without prior consent from the Customer, if such change is required because of regulatory, insurance, safety or statutory changes made after the date of this Agreement. Databax shall in such circumstances give the Customer 30 days notice of such changes. The customer shall have the right by giving notice in writing to Databax to terminate this Agreement, within 14 days of receiving such notice. This Agreement would then be terminated within 30 days of such notification, or on a later date specified by the Customer.

2.3. This Agreement together with its Appendices and Schedules constitutes the entire Agreement between the parties on the subject matter hereof and shall supersede all prior written or verbal agreements and understandings between the parties.

## 3. RESPONSIBILITIES AND OBLIGATIONS

### 3.1. Databax

3.1.1. Databax shall maintain equipment suitable for handling and terminating calls. 3.1.2. Databax shall notify the Customer as soon as reasonably practical, of any changes in rates payable, or modification to the service offered.

3.1.3. Databax shall provide the Customer with reasonable technical and sales support, which Databax in its sole discretion shall consider necessary and appropriate.

3.1.4. Databax may from time to time make changes to equipment used to handle calls and provide the service. Such changes are at the sole discretion of Databax, and may be made without prior consent from the Customer.

### 3.2. Customer

3.2.1. The Customer shall provide Databax on request with information or material regarding the service operated through Databax, including those offered to its End Users, or agents upon and to the extent of any request made by Databax.

3.2.2. The Customer shall ensure that services provided are not used for any unlawful purpose whatsoever including the transmission or offering of any information or services which are unlawful, abusive, harmful, threatening, defamatory, or which in any way infringe copyright, intellectual property rights, trademarks, or which is pornographic, or any other material that may cause offence in any way.

3.2.3. The Customer specifically agrees to indemnify Databax against all costs and liabilities arising out of all claims which result from, or involve an allegation of, any breach of clause 3.2.2.

3.2.4. The Customer shall co-operate with Databax in relation to any complaints, enquiries or investigations regarding services offered by the Customer. The Customer shall, at the discretion of Databax, without limitation bear in full any costs associated with such complaints, investigations, or enquiries or any action whether or not brought by or against Databax.

3.2.5. The Customer shall ensure that any third party using its facilities shall be bound by the terms of this Agreement.

3.2.6. The Customer is responsible for ensuring that no third party intellectual property right is infringed by its choice of telephone number for a particular service and indemnifies Databax against all costs and liabilities arising out of a breach or allegation of a breach of any such third party's intellectual property rights.

### 3.3. Mutual Obligations

3.3.1. Neither party shall not 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 Products or on letterheads, in correspondence, publicity material, advertisements and the like and upon termination of this Agreement, any such use as has been obtained shall cease forthwith.

3.3.2. It is hereby agreed that neither party shall have authority to conclude contracts directly on behalf of the other party and shall have no right or authority to make or settle any claims by or against either party or to pledge the credit of the other party or give any warranty or make any representation on behalf of the other party or commit the other party to any obligation or liability of any kind other than to provide the Services and System for use with the Product sold by either party.

## 4. ASSIGNMENT

4.1. Neither party shall be entitled to assign or transfer the Agreement nor any of its

rights or obligations hereunder without the prior written consent of the other party which shall not be unreasonably withheld, save that the parties shall be entitled to assign or transfer to another member of its group of companies.

## 5. PROVISION OF SERVICES AND WARRANTIES

5.1. Databax cannot provide a fault free service. Databax gives no warranty that its network or services shall be continuous, or will be free from faults. Databax will, however, take steps to ensure its network and services are reasonably fault free, and that service is reasonably uninterrupted.

5.2. In addition to clause 5.1, Databax gives no warranty or guarantee that the service is satisfactory or suitable for the Customer's purposes, or that service shall be uninterrupted or fault free. All warranties relating to the service from Databax are excluded, even if implied by statute.

5.3. The parties acknowledge that no representations, warranties or statements made prior to concluding this Agreement forms any part of the contract, nor has induced either party.

5.4. The Customer acknowledges that:

5.4.1. No representation, warranty or statement other than detailed in this Agreement, forms any part of a Contract, nor has induced the Customer to use Databax.

5.4.2. The service provided by Databax was not designed for the Customer's individual requirements, and it is up to the Customer to decide if the service provided by Databax is of satisfactory quality and fit for the purpose for which it is used

5.4.3. Databax is reliant on a third party for delivery of Inbound Channels, and therefore Databax can have no liability of whatever nature for any delay in provision of the same, moreover Databax makes no warranty that its network or services shall be continuous, or will be free from faults.

5.5. 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 Databax, and mutual agreement of charges that the Customer shall pay to Databax, the Customer is solely responsible for any costs, without limitation, to include, the installation, delivery and maintenance of the same, and Databax can have no liability

whatsoever for any lines or equipment provided at the Site by the Customer.

## 6. TECHNICAL SUPPORT AND SUSPENSION OF SERVICE

6.1. Databax or any of its suppliers or sub-contractors may without liability, prior warning or consent of the Customer, suspend the service, in the event that it wishes to carry out maintenance, upgrade works, or back-ups. Databax will use all reasonable endeavours to minimise the duration of the suspension and also to inform the Customer in advance of any suspension.

6.2. In the event that the Customer becomes aware of any faults with the service, it shall notify Databax as soon as is practicably possible.

6.3. Should the Customer's pre-paid account run out of credit, service will be suspended.

6.4. Service may be suspended should Databax become aware that the Customer or End User(s) is using or is likely to use the Services in any way which may be interpreted as illegal, immoral or otherwise disreputable, or likely to expose Databax to unacceptable risks. Databax's opinion on this matter is final.

6.5. In the event of the Customer's network causing disruption to Databax, Databax reserves the right to terminate, block or suspend communication to protect network integrity.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1. All Intellectual Property Rights owned by one party shall remain vested in such party, and for clarity, and avoidance of doubt:

7.1.1. The Intellectual Property Rights of the Service Numbers shall be vested in Databax;

7.1.2. Equipment provided at the Site, unless purchased by the Customer, all rights of any nature, trade name, documents, drawings and information including any access codes provided to the Customer, and information in Databax's database accessed by the End Users and the Customer remain vested in Databax;

7.1.3. Information provided to the Customer by Databax pursuant to this Agreement, pertaining to the Customer's End Users is the property of the Customer.

7.2. The Customer shall not use Databax's name, trademarks, or copyrights in any way that implies any approval or connection with the services or products offered by the Customer.

## 8. CONFIDENTIALITY

- 8.1. During and after the period while this Agreement remains in force, both parties shall not disclose to any third party the information gained in connection with this Agreement, nor the terms and payments due, but each parties may disclose to its officers and employees such information as may be required for them to fulfil their proper performance of their duties, and may be used in the proper exercise of its rights and obligations under this Agreement.
- 8.2. The obligations of confidence, and restrictions on disclosure shall not apply in the following circumstances;
- 8.2.1. Where such information is disclosed in public in writing by a party.
- 8.2.2. Where such information was already in the public domain, save as a result of a breach of Clause 8.1.;
- 8.2.3. Where a third party, who did obtain the same from the disclosing party, disclosed such information to it lawfully; or
- 8.2.4. Where disclosure is required by law.
- 8.3. The Customer shall ensure that the confidentiality provisions of this Agreement bind all its employees and agents and shall indemnify Databax against loss or damage suffered as a result of a breach of confidence by employees or agents.
- 8.4. Databax shall have the unconditional and irrevocable right to disclose the identity and address of the Customer and any End User in the event of any complaint received from any regulatory or governmental body, PhonepayPlus or BT plc, or any licensed telecommunications carrier, in connection with services offered by the Customer.
- 8.5. The provisions of this clause shall survive the termination of this agreement.

## 9. LIMITATION OF LIABILITY

- 9.1. Except where otherwise expressly stipulated in the Agreement the following provisions set out both parties entire liability (including liability for the acts and omissions of its employees, agents, and subcontractors) in respect of any delay or default in the provision of the Services and any representations statements or tortuous acts or omissions including negligence arising under or in connection therewith.
- 9.2. Without prejudice to the generality of Condition 9.1 above, neither party will be liable for loss of profits, business, goodwill, anticipated savings or any type of special, indirect or consequential loss.

- 9.3. The provisions of this Condition shall apply notwithstanding termination or expiry of the Agreement.
- 9.4. Databax shall not be liable for any indirect, incidental, special or consequential damages or for interrupted communications, lost data, or loss of profit, or economic loss arising out of or in connection with this Agreement and in particular shall not be liable for any delay in rectification of any such problem.
- 9.5. Databax shall not be liable for negligence except for death or personal injury caused by its negligence or that of its officers or employees
- 9.6. Except as otherwise stated the Customer's only remedies for any breach of this agreement, shall at Databax's sole discretion be;
- 9.6.1. Correction in a reasonable timescale of any fault;
  - 9.6.2. Replacement of service supplied.
- 9.7. Direct damages caused as a result of Databax's breaches of this Agreement shall in any event be limited to the previous 1 months revenue generated by the Customer, and received by Databax, but in no event shall exceed £10,000 for any one event or series of events.
- 9.8. Databax shall not be liable for any interruption, delay or failure in service resulting from any matter or event outside of their control, to include, but not limited to any act of god, inclement weather, storm, flood, drought, lightning, fire, power failure, shortage of power, disturbance to power supplies, disconnection damage or disturbance to telecommunications connections and cables, trade dispute, government action, embargoes, termination of or refusal to grant a licence, damage to or loss of Equipment or interruption, failure or delay in any service provided to us by any third party including governmental or regulatory authority or telecommunications Operator, war, military Operations, or riot.
- 9.9. Databax shall have no liability to the Customer in respect of any demand or claim where;
- 9.9.1. The demand or claim arises as a result of the Customer's negligence, misconduct or breach of this Agreement;
  - 9.9.2. If the Customer does not immediately notify Databax of any claim;



9.9.3. If the Customer does not give Databax full authority to deal with the claim, or does not provide all information requested by Databax and complete and proper co-Operation for Databax to defend the claim.

## 10. INDEMNITY

10.1. Without prejudice to any other indemnity referred to in this or any other Agreement, the Customer agrees to indemnify Databax and its parent, subsidiaries, affiliates, officers and employees against any claim or demand, including any made by a third party, arising out of the Customer's or End User's use of the service and all costs relating thereto. The Customer agrees not to hold Databax and its parent, subsidiaries, affiliates, officers and employees responsible for any direct or indirect damage resulting from the use of Databax software or services, in particular, but not limited to; the use or impossibility to use the Service, confidence in information obtained, errors and omissions, defects, viruses, delay in transmission, interruption of service or loss of data.

10.2. The Customer agrees to indemnify Databax, and its parent, subsidiaries, affiliates, officers and employees against any claim or demand, arising from any act of the Customer or third party including but not limited to;

10.2.1. A breach or allegation of breach of the conditions of this Agreement;

10.2.2. Negligence, misconduct or any allegation of negligence or misconduct by the Customer or by any third party;

10.2.3. The marketing or promotion undertaken by or on behalf of the Customer;

10.2.4. The service content provided or marketed by or on behalf of the Customer, and all costs relating thereto.

## 11. TERM & TERMINATION

11.1. This Agreement shall commence on the date hereof and thereafter it shall continue for an indefinite period until terminated by either in accordance with either clause 11.2, 11.3, 11.4 or 11.5.

11.2. Either party shall be entitled to terminate this Agreement by giving to the other not less than twelve (12) months notice of termination, such notice expiring on the expiry of either the initial twelve month period or at any time thereafter.

11.3. Databax may terminate this Agreement with immediate effect by giving notice at any time, if;

11.3.1. The Customer does not comply with the terms of this Agreement;

11.3.2. The Customer says, or appears to intend, that it will not abide by the terms

of this Agreement;

- 11.3.3. The Customer ceases trading, convenes a meeting of, or comes to an arrangement with its creditors, has distress or other seizure levied over any of its assets or does not satisfy any demand for payment from any legal person;
  - 11.3.4. Any step is taken to wind up or dissolve the Customer, a receiver, and/or manager or administrator appointed over any assets;
  - 11.3.5. Databax believes the Customer has allowed services to be used for any unlawful purpose or any use prohibited by this Agreement; or
  - 11.3.6. Databax or the Customer, is instructed by, or receives any serious complaint or objection from BT Plc, any Carrier with whom it Contracts, OFTEL, or regulatory or governmental body.
- 11.4. Either party may terminate this Agreement if
- 11.4.1. Either party has committed a breach of the Agreement, and fails to remedy the breach within 30 days of notice requiring it to do so, and;
  - 11.4.2. Either party takes any steps to wind up or dissolve, or a receiver and/or manager or administrator is appointed over any assets;
- 11.5. Termination shall be without prejudice to the rights and obligations accruing up to and including the date of termination.

## 12. GENERAL

- 12.1. This Agreement represents the entire understanding between the two parties. No other prior arrangements, representations or understandings, orally or in writing shall have any validity.
- 12.2. Databax'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.
- 12.3. The parties must notify each other in writing of any change of address. All notices to be sent in accordance with Clause 14.1.
- 12.4. English Law applies to this agreement. Both parties hereby submit to the exclusive jurisdiction of the English Courts.
- 12.5. 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.

12.6.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.

### 13. NON SOLICITATION

13.1.During the term of this Agreement and for a further period of 12 months after it's 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.

13.2.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.

### 14. NOTICES

14.1. Any notice or other document to be given or served hereunder shall be in writing and shall be delivered or sent by first class post, facsimile message or telex to the party at the address appearing in this Agreement or such other address as each party shall substitute for such purpose by notice given to the other party.

14.2.Any such notice or document shall be deemed to have been served:-

14.2.1. If delivered by hand, at the time of delivery: or

14.2.2. If sent by facsimile, upon receipt of the appropriate answerback code; or

14.2.3. If posted, on the fifth business day following that on which the envelope containing the same shall have been put into the post.

14.2.4. In proving such service it shall be sufficient to prove that delivery was made or that transmission was duly made and received or that the envelope containing such notice or document was properly addressed and posted as a prepaid first class letter.

---