

DATED 28 JANUARY 2004

(1) CLINPHONE GROUP LIMITED

AND

(2) CASTLEGATE 284 LIMITED

SUBSCRIPTION AGREEMENT
relating to 24,000,000 ordinary shares of £1 each

LANDWELL

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Ref: RJE/KRG/SF



AGREEMENT

DATED 28 January 2004

BETWEEN:

- (1) **CLINPHONE GROUP LIMITED**, a company incorporated in England and Wales (registered number 3264836) whose registered office address is at Ladybay House, Meadow Grove, Nottingham NG2 3HF (the "**Subscriber**"); and
- (2) **CASTLEGATE 284 LIMITED**, a company incorporated in England and Wales (registered number 4927157) whose registered office address is at Ladybay House, Meadow Grove, Nottingham NG2 3HF (the "**Company**").

WHEREAS:

- (A) The Company is a private limited company with an authorised share capital of £1,000 divided into 1,000 ordinary shares of £1 each, of which 1,000 have been issued and are fully paid or credited as fully paid. It is proposed that the Company increase its authorised share capital from 1,000 to 24,001,000 divided into 24,001,000 ordinary shares of £1 each by the creation of 24,000,000 ordinary shares of £1 each.
- (B) The Subscriber is the sole shareholder of the Company.
- (C) The Subscriber wishes to subscribe for, and the Company wishes to allot and issue to the Subscriber, 24,000,000 new ordinary shares of £1 each (the "**Subscription Shares**") on the date of this agreement (the "**Allotment Date**") on the terms and subject to the conditions set out in this agreement.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, and in addition to expressions defined elsewhere in this agreement, the following expressions have, unless inconsistent with the context or otherwise specified, the following meanings:

"**Articles**" the articles of association of the Company as amended to incorporate the amendments set out in the Written Resolutions on and as in force on the Allotment Date;

"**Borrower**" Clinphone Limited, a company incorporated in England and Wales with registered number 4927152 whose registered office address is at Ladybay House, Meadow Grove,

Nottingham NG2 3HF;

"Completion"	completion of the assignment of the Note, the Subscription and the allotment of the Subscription Shares pursuant to clause 4;
"Encumbrance"	any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, claim, equity or any other encumbrance or security interest of any kind, and any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;
"Note"	the zero coupon discounted note issued, prior to the entry into this agreement, on the Allotment Date by the Borrower to the Subscriber;
"Transfer"	a transfer of the Note and all the rights and benefits of the Subscriber under or in relation to the Note from the Subscriber to the Company, in a form required by the Note and agreed between the Subscriber and the Company; and
"Written Resolutions"	the written resolutions of the Company to be passed by the Subscriber as the sole shareholder of the Company, amongst other things to increase the authorised share capital of the Company and to make the amendments incorporated in the Articles, in a form agreed between the Subscriber and the Company.

1.2 In this agreement, unless inconsistent with the context or otherwise specified:

1.2.1 clause headings are inserted for ease of reference only and do not affect its interpretation; and

1.2.2 a reference to a clause is a reference to a clause of this agreement.

2 SUBSCRIPTION

2.1 The Subscriber hereby subscribes for, and the Company agrees to allot and issue to the Subscriber, the Subscription Shares (the "**Subscription**") on the terms and subject to the conditions set out in this agreement.

2.2 The Subscription Shares are subscribed for at an aggregate subscription price of £25,798,899 (£1.074954 (rounded) per Subscription Share), which will be payable in accordance with the provisions of clause 3.

2.3 Save in respect of amounts paid up on the Subscription Shares as to premium, the Subscription Shares shall rank pari passu in all respects with the existing

issued ordinary shares of £1 each in the share capital of the Company in issue on the Allotment Date and the Subscription Shares shall be allotted and issued subject to the memorandum of association of the Company and the Articles, as amended from time to time.

3 PAYMENT FOR THE SUBSCRIPTION SHARES

3.1 The Subscription Shares shall be paid up as follows:

3.1.1 the sum of £1 ("**Nominal Value**") per Subscription Share, being the nominal value of each Subscription Share, is payable on the Allotment Date in accordance with the provisions of clause 3.2; and

3.1.2 the sum of £0.074954 (rounded) ("**Premium**") per Subscription Share, being premium payable on each Subscription Share, is payable and shall be paid up in accordance with the provisions of regulation 12 in Table A of the Companies (Tables A to F) Regulations 1985 (as amended) and the provisions of clauses 3.3, 3.4 and 3.5.

3.2 In payment up of the Nominal Value per Subscription Share, the Subscriber hereby agrees to assign, with full title guarantee, to the Company the Note together with all its rights and benefits under or in relation to the Note and the Company hereby agrees to accept the assignment to it of the Note and all the rights and benefits of the Subscriber under or in relation to the Note.

3.3 In payment up of the Premium per Subscription Share, the Company shall procure that its directors (so long as the Company is the registered holder of the Note):

3.3.1 resolve to capitalise all and any realised profits arising on the Note, whether accrued or received, within 30 days following each of 28 February 2004 and 28 February 2005; and

3.3.2 appropriate the sum resolved to be capitalised to the share premium account of the Company and apply such sum in or towards paying up, proportionately in relation to each Subscription Share, the amount, if any, for the time being unpaid in respect of the Premium on each Subscription Share.

3.4 The obligations of the Company set out at clause 3.3 shall cease to apply if and to the extent that the Subscription Shares become fully paid up as to Nominal Value and the Premium payable on such shares.

3.5 If and to the extent that the Subscription Shares do not become fully paid up as to the Nominal Value and the Premium payable on such shares on or before 30 days following 28 February 2005, the Subscriber shall pay any amount unpaid on the Subscription Shares as to the Premium payable on such shares when called to do so by the directors of the Company by giving at least five days'

notice of the call in accordance with the provisions of regulation 12 in Table A of the Companies (Tables A to F) Regulations 1985 (as amended).

4 **COMPLETION**

Completion shall take place at such place as the Subscriber and the Company may agree forthwith following the execution of this agreement when:

- 4.1 the Subscriber shall pass the Written Resolutions in accordance with the articles of association of the Company and the Companies Act 1985;
- 4.2 the Subscriber shall execute and deliver to the Company the Transfer;
- 4.3 the Company shall procure that its directors hold a board meeting at which it shall be resolved to allot and issue the Subscription Shares to the Subscriber fully paid up as to nominal value and nil paid as to premium on the terms and subject to the conditions set out in this agreement and the memorandum of association of the Company and the Articles, as amended from time to time;
- 4.4 the Company shall enter the name of the Subscriber as the holder of the Subscription Shares in its registers of members and allotment and shall procure that a share certificate in respect of the Subscription Shares is issued and delivered to the Subscriber;
- 4.5 the Subscriber shall give notice of the Transfer to the Borrower; and
- 4.6 the Company shall instruct the secretary of the Company to file form 123 (notice of increase in authorised share capital) and a form 88(2) (return of allotments) in respect of the creation and allotment of the Subscription Shares with the Registrar of Companies.

5 **WARRANTIES AND REPRESENTATIONS**

- 5.1 The Subscriber warrants and represents to the Company that each of the statements set out in this clause 5.1 (the "**Subscriber's Warranties**") is true and accurate in all respects and is not misleading at the date of this agreement and Completion, and that:
 - 5.1.1 the Subscriber is the sole legal and beneficial owner of the Note and the rights and benefits of the payee under or in relation to the Note;
 - 5.1.2 there is no Encumbrance, nor is there any agreement, arrangement or obligation to create or give any Encumbrance, on, over or affecting the Note or any of the rights and obligations of the Subscriber under or in relation to the Note and no claim has been made by any person to be entitled to any Encumbrance;

- 5.1.3 the Subscriber has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under this agreement and all the documents which are to be executed by it at Completion;
- 5.1.4 all corporate action required by the Subscriber validly and duly to authorise the execution and delivery of, and the exercise of its rights and performance of its obligations under, this agreement and all other documents which are to be executed by it at Completion has been duly taken; and
- 5.1.5 this agreement and all other documents which are to be executed by it at Completion will, when executed, create legal, valid and binding obligations of the Subscriber enforceable against the Subscriber in accordance with their terms subject, as to enforcement of remedies, to general equitable principles and to bankruptcy, insolvency and similar laws affecting creditors' rights generally.
- 5.2 The Company warrants and represents to the Subscriber that each of the statements set out in this clause 5.2 (the "**Company's Warranties**") is true and accurate in all respects and is not misleading at the date of this agreement and Completion, and that:
- 5.2.1 the Subscription Shares, when allotted:
- (a) will be fully paid up or credited as fully paid up as to nominal value and nil paid as to the premium payable on the Subscription Shares;
 - (b) save in respects of amounts paid upon the Subscription Shares as to premium, will rank pari passu in all respects with the existing issued ordinary share of £1 in the capital of the Company; and
 - (c) will represent, together with the existing ordinary share of £1 in the share capital of the Company registered in the name of the Subscriber, the entire issued share capital of the Company;
- 5.2.2 the Company does not have outstanding any subscriptions, options, rights, warrants, convertible securities or other agreements or commitments to issue, or contracts or any other agreements obligating the Company to issue any shares of any class or kind, or securities convertible into shares;
- 5.2.3 the Company has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this agreement and all the other documents which are to be executed by it at Completion;

5.2.4 all corporate action required by the Company validly and duly to authorise the execution and delivery of, and the exercise of its rights and performance of its obligations under, this agreement and all other documents which are to be executed by it at Completion has been duly taken; and

5.2.5 this agreement and all other documents which are to be executed by it at Completion will, when executed, create legal, valid and binding obligations of the Company enforceable against the Company in accordance with their terms subject, as to enforcement of remedies, to general equitable principles and to bankruptcy, insolvency and similar laws affecting creditors' rights generally.

5.3 The Subscriber's Warranties and the Company's Warranties shall remain in full force and effect notwithstanding Completion.

6 GENERAL PROVISIONS

6.1 Costs

Except as otherwise stated in any provision of this agreement, each party shall pay its own costs and any applicable tax thereon in relation to the negotiations leading up to the Subscription and to the preparation, execution and carrying into effect of this agreement and all other documents referred to in it. The Subscriber confirms that no expense of whatever nature relating to the allotment and issue of the Subscription Shares which cannot lawfully be borne by the Company has been or is to be borne by the Company.

6.2 Further assurance

Each of the Subscriber and the Company shall, from time to time at its own cost and on being reasonably required to do so by the other party, perform or procure the performance of all such acts and/or execute or procure the execution of all such documents in a form reasonably satisfactory to such other party to give full effect to this agreement and to secure to each other the full benefit of the rights, powers and remedies conferred upon the other party by or pursuant to this agreement.

6.3 Entire agreement

The written terms of this agreement and the Transfer constitute the entire understanding, and constitute the whole agreement in relation to their subject matter, and supersede any previous agreement between the parties with respect thereto.

6.4 The Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this agreement has no right under The Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

6.5 Severability

If at any time any provision of this agreement is or becomes, or is adjudicated by any court of competent jurisdiction or public authority to be, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this shall not affect or impair:

6.5.1 the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or

6.5.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement.

6.6 Amendment

This agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by or on behalf of the parties to this agreement.

6.7 Waiver

No failure to exercise or delay in exercising any right or remedy under this agreement shall constitute a waiver thereof, and no waiver by either party of any breach or non-fulfilment by the other party of any provision of this agreement shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof. No single or partial exercise of any right or remedy under this agreement shall preclude or restrict the further exercise of any such right or remedy. The rights and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

6.8 Assignment

This agreement shall be binding upon and inure for the benefit of the successors of the parties, but neither party may assign, encumber, dispose of or otherwise transfer any of its rights under this agreement.

6.9 Counterparts

This agreement may be executed in one or more counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this agreement, but all the counterparts shall together constitute the same instrument.

6.10 Notices

6.10.1 A notice or other communication in connection with this agreement:

- (a) must be in writing; and
- (b) must be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside the United Kingdom) to the address of the addressee which is specified on page 1 of this agreement or, if the addressee notifies another address in England and Wales or a facsimile number for such purpose, then to that other address or facsimile number.

6.10.2 A notice or other communication shall take effect from the time it is received (or, if earlier, the time it is deemed to be received in accordance with clause 6.10.3) unless a later time is specified in it.

6.10.3 Any notice or other communication given or made under or in connection with the matters contemplated by this agreement shall be addressed as provided in clause 6.10.1 and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if personally delivered, upon delivery at the address of the relevant party;
- (b) if sent by first class post from an address in England and Wales to another address in England and Wales, five business days after the date of posting;
- (c) if sent by airmail from an address in England and Wales to an address anywhere else in the world or vice versa, ten business days after the date of posting; and
- (d) if sent by facsimile transmission, on receipt of printed confirmation of successful transmission (subject to the confirmation of the facsimile transmission by personal delivery or by post in accordance with clause 6.10.1 within two business days of the facsimile taking effect).

7 GOVERNING LAW AND JURISDICTION

7.1 This agreement is governed by, and shall be construed in accordance with, the law of England and Wales.

7.2 The parties hereby agree that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and to

resolve any disputes, arising in connection with this agreement and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF the parties hereto or their duly authorised representatives have executed this agreement the day and year first above written.

SIGNED by
for and on behalf of
CLINPHONE GROUP LIMITED

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SIGNED by
for and on behalf
CASTLEGATE 284 LIMITED

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) *[Signature]*