

PENETRATION TESTING SERVICES AGREEMENT

1.

DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms used in the Agreement have the following meanings:

"Acceptable Use Policy" means Wavenet's acceptable use policy which can be found at <https://www.wavenet.co.uk/terms-and-conditions> or such other website address as notified to the Customer from time to time;

"Affiliates" means the relevant company and any other company which is its subsidiary or holding company and any other company which is a subsidiary of that holding company (where "holding company" and "subsidiary" have the respective meanings set out in section 1159 of the Companies Act 2006);

"Agreement" means the agreement between the Customer and Wavenet for the provision of the Services incorporating these terms and conditions and the Order, together with any document referenced therein, which may be amended from time to time in accordance with clause 19.12;

"Applicable Law" means all applicable laws, statutes, regulations and codes in force during the Term, as amended from time to time;

"Business Day" means Monday to Friday (inclusive), excluding English bank holidays or public holidays;

"Charges" means the costs and charges payable by the Customer in connection with this Agreement as set out in the Order;

"Confidential Information" means information of, or concerning a party to this Agreement or that party's Affiliate, whether concerning the business, affairs, customers, clients or suppliers, technical or commercial information (including specifications, documents, drawings and designs), disclosed in writing, electronically or orally, where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

"Consent Form" means an authorisation form or similar document that provides Customer consent to specifics of the Services including testing targets, dates and times;

"Contract Year" means a period of twelve (12) months commencing from either the Start Date of this Agreement or any subsequent anniversary of the Start Date;

"Control" has the meaning given in s1124 of the Corporation Tax Act 2010, and the expression change of control will be construed accordingly;

"Customer" means the customer of the Services specified in the Order;

"Customer Premises" means the address of the Customer's premises where the Services are to be provided, as set out in the Order;

"Customer Software" means any software applications which are owned by or licenced to the Customer;

"Cyber-attack" means an attempt by hackers to damage or destroy a computer network or system;

"Data" any data held on the System in connection with the Customer's use of the Services;

"Data Client" means in relation to any Protected Data whichever of; (i) the Customer or member of the Customer's Group; or (ii) any customer or end-customer of the Customer; (iii) is the Controller in relation to that Protected Data;

"Data Protection Laws" means all applicable law relating to data protection, the processing of personal data and privacy, including without limitation: (i) the Data Protection Act 2018; (ii) the UK GDPR; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended); and references to Controller, Processor, Data Subjects, Personal Data, Process, Processed, Processing, Processor and Supervisory Authority have the meanings set out in such Data Protection Laws;

"Data Protection Losses" means all liabilities, including all: (i) reasonable costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and (ii) to the extent permitted by Applicable Law, (a) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; (b) compensation that is ordered by a Supervisory Authority to be paid to a Data Subject; and (c) reasonable costs of compliance with investigations by a Supervisory Authority;

"Data Security Incident" means a breach of security leading to the accidental or unlawful destruction, loss, alteration,

unauthorised disclosure of, or access to, Protected Data transmitted, stored or otherwise Processed;

"Data Subject Request" means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

"Dispute" has the meaning given in clause 7;

"Early Termination Charge" means, unless otherwise defined in the Order, the termination charge of 100% of all Charges due until the expiry of the Term;

"Emergency" means a state of emergency that demands immediate action resulting from a danger or threat of danger to the United Kingdom from foreign or domestic sources and declared to be in existence by governmental authority;

"End User" means any individual end user of the Services, including but not limited to the Customer's employees, agents and independent contractors;

"Equipment" means any equipment required for the provision of the Services as set out in the Order and/or Schedule;

"Force Majeure Event" means events, acts, omissions or non-events beyond a party's reasonable control or responsibility and which prevents it from, hinders or delays it in, performing its obligations under this Agreement including, without limitation, the failure of any carrier to provide network services, capacity and/or connectivity (or any element thereof) to Wavenet on which it was reliant for the purposes of this Agreement, any act of God, acts of public enemies, terrorist attacks, nuclear chemical or biological contamination, inclement weather, accidental damage, vandalism, utility outage or failure or shortage of power supplies (save to the extent Wavenet takes express responsibility for any uninterruptable power supplies under this Agreement), flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, denial of service attack (save to the extent the Customer has purchased a mitigation service from Wavenet under this Agreement), hacking, spamming, virus or other hostile computer program, war, blockade, riot, explosions, embargo, pandemic, sanctions or trade restrictions imposed by the authorities of the United Kingdom, European Union or the United States of America, any act or omission or regulation(s) of UK Government, highways authorities, or other competent authorities but not including, without limitation, an inability to pay;

"Intellectual Property Rights" means all intellectual property rights arising anywhere in the world whether registered or unregistered, including any application for registration, and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future including copyright, related rights, moral rights, know-how, confidential information, trade secrets, trade marks, trade names, service marks, business names, domain names, rights in get-up, goodwill patents, design rights, rights in computer software, database rights, rights to use, rights to inventions and all rights in the nature of unfair competition rights and rights to sue for passing off;

"International Transfer" means a transfer to a country outside the United Kingdom and/or the European Economic Area (as it is made up from time to time) of Protected Data that is undergoing Processing or that is intended to be Processed after transfer;

"Malware" means viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware;

"Network" means Wavenet's telecommunications network and equipment used to provide the Services;

"Normal Working Hours" means 9.00am to 5.30pm on any Business Day;

"Order" means the order for the provision of the Services by Wavenet to the Customer which forms part of this Agreement;

"Processing Instructions" has the meaning given to that term in clause 10.8.1;

"Protected Data" means Personal Data that has been passed to Wavenet and is required to be Processed under this Agreement by Wavenet as a Processor, which is more particularly described in the Data Protection Annex to these terms and conditions;

"Scoping Questionnaire" means the document detailing the scope and perimeter of the Services to be performed;

"Security Threat" means a possible danger that might exploit a vulnerability to breach security of the System and therefore cause possible harm;

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"Services" means the penetration testing services provided by Wavenet under or in connection with this Agreement, as specified in the Order;

"Start Date" means the date on which the supply of the Services commences;

"Sub-Processor" means any third party appointed by the Wavenet to Process the Protected Data;

"System" means the Customer's IT infrastructure including hardware, software, data, equipment and operating system;

"Term" means the period during which the Customer contracts with Wavenet for the provision of Services, from and including the Start Date for the duration set out in the Order or, if not specified in the Order, a period of thirty-six (36) months;

"UK GDPR" means the United Kingdom General Data Protection Regulation, Retained Regulation (EU) 2016/679;

"Wavenet" means Wavenet Limited, company registration number 03919664; and

"Wavenet Materials" has the meaning given in clause 5.1.20.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its personal representatives, successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted.

1.5 A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms including, include, in particular, for example or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. APPLICATION OF THIS AGREEMENT

2.1 This Agreement applies solely where the Customer procures the Services as a standalone service.

2.2 All Services provided under this Agreement shall be provided by Wavenet on a business-to-business basis and all Services purchased by the Customer are supplied by Wavenet for business purposes only.

2.3 The Order constitutes an offer by the Customer to purchase Services in accordance with this Agreement and will only be accepted by Wavenet in accordance with clause 2.4.

2.4 The Order will only be deemed to be accepted when Wavenet issues the order accepted notification email to the Customer.

2.5 It is the Customer's responsibility, prior to submitting an Order, to evaluate the Services being purchased and to satisfy itself that the Services referred to in the Order meet the Customer's requirements. Upon Wavenet's acceptance of the Order the Customer will be bound to purchase the Services referred to in the Order, in accordance with this Agreement.

2.6 Any descriptive matter or advertising issued by Wavenet and any illustrations or descriptions of the Services contained in Wavenet's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Agreement or have any contractual force.

2.7 These terms and conditions apply to this Agreement to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or other course of dealing.

2.8 In the case of conflict or ambiguity, the order of precedence for this Agreement, and any documents attached to or referred to in it, will be as follows, in descending order of precedence:

2.8.1 the Order;

2.8.2 these terms and conditions; and

2.8.3 any other document or documents attached or referred to in the Order.

2.9 No addition to, variation of, exclusion or attempted exclusion by the Customer of any term of this Agreement will be binding upon Wavenet unless agreed in writing and signed by Wavenet's duly authorised representative.

2.10 Any error or omission in any sales literature, Order, quotation, price list, acceptance of offer, invoice or other document or information issued by Wavenet may be subject to correction without any liability on the part of Wavenet.

2.11 Any quotation given by Wavenet will not constitute an offer and will only remain valid for a period of thirty (30) days from the date the quotation was issued unless otherwise agreed in writing.

3. COMMENCEMENT AND TERM

3.1 These terms and conditions will apply from Order acceptance and the Agreement will commence on the Start Date for the Term and may not be terminated by either party until this period has elapsed unless terminated in accordance with clauses 14.1 or 14.2.

3.2 Upon expiry of the Term this Agreement will automatically expire.

3.3 The Customer may at any time request additional Services from Wavenet. Should Wavenet agree to provide additional services such additional services will be set out in a new Order.

4. WAVENET'S OBLIGATIONS AND SUPPLY OF THE SERVICES

4.1 Wavenet shall:

4.1.1 use reasonable endeavours to supply the Services from the Start Date but time shall not be of the essence for the performance of the Services;

4.1.2 supply the Services using the reasonable care and skill to be expected from a competent provider of services of the same kind as the Services;

4.1.3 have and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement; and

4.1.4 supply the Services to the Customer in accordance with this Agreement in all material respects.

4.2 Wavenet:

4.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that it will prevent a Security Threat or Cyber-attack; nor that the Services will meet the Customer's requirements;

4.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the provision of the Services where such delays or delivery failures are caused by delays or negligence of the Customer and/or any third party outside Wavenet's control, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such IT and communications facilities, including Security Threat and Cyber-attack;

4.2.3 shall not be liable to the Customer for any defect in the Services to the extent caused by any defect or failure in the System;

4.2.4 shall not be liable for any loss or damage to the System which is caused by any existing weakness (or defect) in the System that is discovered or initiated by the provision of the Services;

4.2.5 reserves the right to withdraw or amend any of the Services provided under this Agreement if necessary, on written notice, to comply with Applicable Law, or to take into account the withdrawal of, or a significant change to, the technology used to provide the Services, provided such withdrawal or amendment will not materially affect the nature or quality of the Services; and

4.2.6 will normally carry out work by appointment and during Normal Working Hours. At the Customer's request, Wavenet may agree (at its sole discretion) to work outside Normal Working Hours and the Customer shall pay Wavenet's reasonable additional Charges for complying with such a request.

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- 4.3 Upon receipt of a completed Scoping Questionnaire signed by the Customer, Wavenet will provide the Services on pre-arranged dates to be agreed by the parties.
- 4.4 The Services will aim to identify where the System is at risk of Cyber-attacks using reasonable endeavours.
- 4.5 The Customer acknowledges that the provision of these Services, including the use of third-party services, does not provide a guarantee against Cyber-attacks or Security Threats or that the System is or will be free from every form of attack, flaw, or security weakness.
- 4.6 Where it is identified as a result of the Services that remediation works are required, the cost of such remediation works is not included within the Charges.

5. CUSTOMER OBLIGATIONS AND USE OF THE SERVICES

- 5.1 The Customer:
 - 5.1.1 shall ensure that the Scoping Questionnaire is completed accurately and by an authorised representative of the Customer;
 - 5.1.2 shall be responsible for obtaining and maintaining any necessary licences, permissions and consents from third parties prior to the provision of Services;
 - 5.1.3 shall be wholly responsible for the security of its proprietary and Confidential Information and Data held on the System;
 - 5.1.4 warrants that the System is sufficiently robust to support and facilitate the provision of the Services;
 - 5.1.5 shall maintain up-to-date back-up copies of the configuration for software and hardware and the programs and Data necessary to restore the System to its original state on completion of the provision of the Services and ensure that such back-up copies are kept up to date, in order and available for use at all times;
 - 5.1.6 agrees that it shall use the results of the Services solely for its internal business purposes. The Customer may disclose such results to third parties only to the extent reasonably necessary for those internal purposes;
 - 5.1.7 shall indemnify Wavenet: (i) where inaccurate information is provided to Wavenet causing a third-party system to be penetrated; (ii) against any claim of illegal activity or infringement, or damages, or loss, whether direct, indirect or consequential resulting from conducting the Services; or (iii) where the Services causes damage to the System and a claim is made by a third party;
 - 5.1.8 warrants that it is the sole owner of, or has legal authority to grant access to, the System and shall indemnify Wavenet for any loss, damages, costs, expenses or other claims, howsoever caused, by any breach of this clause 5.1.8;
 - 5.1.9 shall be solely responsible for the correction of any defect or failure in the System or network communications;
 - 5.1.10 may be required to sign a Consent Form and Wavenet shall not be required to schedule or provide any Services until the Customer has returned such Consent Form duly completed and signed;
 - 5.1.11 agrees that all Intellectual Property Rights within deliverables, such as reports, consultancy guidance and documentation will remain Wavenet's property or that of its licensors. The Customer accepts that all such reports, consultancy guidance and documentation provided for the Services are accurate at the time of delivery, based upon the information provided by the Customer;
 - 5.1.12 co-operate with Wavenet in all matters relating to the Services;
 - 5.1.13 promptly notify Wavenet, providing it with all information that it reasonably requires, if the

Customer experiences any problem or failure with the Services and, where such problem or failure results from a failure or defect in the Services, the Customer will allow Wavenet every opportunity to rectify the same;

- 5.1.14 not make, or permit to be made, any statement in any manner, or on any medium or broadcast channel, which would be, or would be reasonably likely to be deemed, detrimental to Wavenet's name or reputation, or deemed detrimental to any products or services sold or marketed by Wavenet;
 - 5.1.15 use the Services in accordance with Applicable Law, this Agreement, the Acceptable Use Policy, and any reasonable operating instructions provided to the Customer by Wavenet;
 - 5.1.16 provide Wavenet, its employees, agents, consultants and Third Party Contractors, with safe access to the Customer Premises, office accommodation, and other facilities, as reasonably required, to provide the Services and ensure that working conditions at the Customer Premises are safe, secure and suitable;
 - 5.1.17 provide Wavenet with such information and materials as Wavenet may reasonably require in order to supply the Services, and ensure that such information and materials are complete and accurate in all material respects;
 - 5.1.18 prepare the Customer Premises for the supply of the Services at the Customer's expense;
 - 5.1.19 accept that Wavenet shall have no liability for any delay in the provision of the Services caused by the Customer, or any third party not under Wavenet's control doing, or omitting to do, anything including refusing Wavenet access to the Customer Premises, or any facilities or parts thereof, and the Customer shall reimburse Wavenet for any costs and losses which Wavenet incurs as a result of such delay; and
 - 5.1.20 keep all materials, Equipment, documents and other property of Wavenet ("Wavenet Materials") at the Customer Premises in safe custody at its own risk, maintain the Wavenet Materials in good condition until returned to Wavenet, and not dispose of or use the Wavenet Materials other than in accordance with Wavenet's written instructions or authorisation.
- 5.2 The Customer acknowledges that rescheduling of the Services at short notice would make re-allocation of Wavenet's committed resources to alternative tasks impractical, resulting in Wavenet incurring financial loss. Accordingly, the Customer agrees that, for any notice of rescheduling of Services received by Wavenet prior to the scheduled commencement of the Services, Wavenet may charge a percentage of the Charges for the rescheduled Services ("Re-Scheduling Charge") as follows:
 - 5.2.1 less than ten (10) Business Days' notice, payment for 50% of the total project will be charged; and
 - 5.2.2 less than five (5) Business Days' notice, full payment for the project will be charged.
 - 5.3 Upon receipt of any Customer notice provided in accordance with clause 5.2 Wavenet shall re-schedule the Services for a date as soon as reasonably practicable. Where the Customer re-schedules the Services for another date, the Charges for the re-booked Services shall apply in addition to the Re-Scheduling Charges applied in accordance with clause 5.2.

6. CHARGES AND PAYMENT

- 6.1 The Customer will pay: (i) the Charges for the Services as described in the Order; (ii) reasonable incidental expenses including but not limited to travelling expenses, hotel costs, subsistence and any associated expenses; (iii) the cost of services provided by third parties and required by Wavenet for the performance of the Services and; (iv) the cost of any materials required for the provision of the Services as well

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as all other Charges agreed and/or or charged to the Customer in accordance with this Agreement from time to time.

- 6.2 Wavenet shall be entitled to raise invoices at any time prior to or following the performance of the Services.
- 6.3 The Customer will pay all invoices, by direct debit, within fourteen (14) days of the date of the invoice. If the Customer cancels the direct debit mandate or pays by any other means than by an active direct debit instruction following the Start Date, an additional administration fee of £6.00 plus VAT will be added to the Customer's monthly invoice until the direct debit instruction is reinstated by the Customer.
- 6.4 Wavenet provides paperless billing as standard with invoices sent to the Customer via email. Wavenet will provide paper billing for an additional fee of £5.50 plus VAT per month, which will be added to the Customer's monthly invoice, upon the Customer's written request via email for paper billing to billing@wavenetuk.com.
- 6.5 All amounts payable to Wavenet under this Agreement:
 - 6.5.1 are exclusive of VAT;
 - 6.5.2 will be paid in full by the Customer without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.6 If the Customer, in good faith, disputes an invoice and wishes to withhold the disputed sum, the Customer must notify Wavenet in writing of such dispute within fourteen (14) days of the date of the invoice and make payment of any undisputed amount. Any such disputed amount shall be dealt with by Wavenet in accordance with clause 7.
- 6.7 Notwithstanding the provisions of clause 6.6, Wavenet shall not be obliged to pay or credit the Customer for any disputed Charges over 6 months old, that have not already been disputed by the dispute procedure set out in clause 6.6 and the Customer shall waive all rights to file any claim for such disputed Charges.
- 6.8 If the Customer fails to make a payment due to Wavenet under this Agreement by the due date, then, without limiting any other remedies available to Wavenet, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.
- 6.9 Any omission or delay by Wavenet in invoicing any Charges shall not prohibit Wavenet from raising an invoice at a later date nor shall it relieve the Customer of any liability to pay the same.

7. DISPUTE RESOLUTION PROCEDURE

Any dispute arising out of or in connection with this Agreement, including in relation to Charges or invoices ("Dispute") shall be treated in accordance with this clause:

- 7.1 representatives of each of the parties to this Agreement shall seek to resolve the Dispute;
- 7.2 in the event that any matter cannot be resolved by the representatives, any party may refer the Dispute to the appropriate directors of the parties (together the "Executives");
- 7.3 the Executives shall seek to resolve the matter within twenty (20) days of it being referred to them and shall as soon as reasonably practicable and, in any event, no later than seven (7) days after a written request from any party to the other, meet in good faith and use all reasonable endeavours to resolve the Dispute;
- 7.4 for the purposes of this clause, the date on which the Dispute arose will be the date on which a party notifies the others in writing that a Dispute has arisen;
- 7.5 for the avoidance of doubt, unless a party terminates this Agreement in accordance with its terms, in the event of a Dispute, each party will remain obliged to fulfil all of its obligations under this Agreement, and the undisputed

element of any disputed invoice will be paid in accordance with this Agreement;

- 7.6 all negotiations pursuant to this clause shall be conducted in strict confidence. Those negotiations shall be without prejudice to the rights of the parties and shall not be used in evidence or referred to in any way without the prior written consent of the parties in any future court proceedings;
- 7.7 no party may commence court proceedings in relation to any Dispute until they have attempted to settle it in accordance with this clause; and
- 7.8 if the Customer fails to engage in the dispute resolution procedure in accordance with this clause 7, the Customer waives its right to file any claim against Wavenet in relation to any Dispute.

8. CREDIT LIMIT/SECURITY

- 8.1 Wavenet may carry out a credit check on the Customer at any time prior to or following acceptance of the Order.
- 8.2 Wavenet reserves the right to impose a monthly financial limit upon the Charges incurred by the Customer under this Agreement ("Credit Limit") proportionate to the amount of Charges payable under the Term.
- 8.3 Wavenet may amend the Credit Limit at any time upon written notice to the Customer.
- 8.4 If the Customer exceeds the imposed Credit Limit:
 - 8.4.1 Wavenet reserves the right to demand immediate payment of all unpaid Charges due under the Term, whether invoiced or not; and
 - 8.4.2 the Customer will remain responsible for all Charges incurred, including those exceeding the Credit Limit.
- 8.5 Wavenet reserves the right to require the Customer to pay a deposit, or other security, as a condition of providing the Services. Wavenet may retain such deposit or security until the Customer has paid all sums due under the Agreement.
- 8.6 No interest will be payable to the Customer on any such deposit or security held by Wavenet.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) will be owned by Wavenet and/or its Affiliates, save to the extent that any of the same contain Intellectual Property Rights owned by third parties.
- 9.2 Subject to clause 9.6, Wavenet grants to the Customer, a non-exclusive, royalty free, licence to use Wavenet's Intellectual Property Rights within the United Kingdom, for the purpose of utilising the Services in accordance with the terms of the Agreement and any usage guidelines that Wavenet may provide from time to time.
- 9.3 The Customer will not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants Wavenet a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Wavenet for the Term for the purpose of providing the Services.
- 9.5 Notwithstanding clause 9.2, the Customer will not be entitled to use the name, trade mark, trade name or any other proprietary identifying marks or symbols of Wavenet and/or its Affiliates without Wavenet's prior written consent.
- 9.6 Wavenet shall, subject to clause 9.9, defend the Customer against any judgment by a competent UK court of law that any Services (excluding any Third Party Software) infringe any United Kingdom patent effective as of the Start Date, copyright, trademark, database right or right of confidentiality, and shall indemnify the Customer for the costs of defending any claim (reasonably and properly incurred) and for any amounts awarded in judgment or settlement of such claims, provided that:
 - 9.6.1 Wavenet is given prompt notice of any such claim;
 - 9.6.2 the Customer provides reasonable co-operation to Wavenet in the defence and settlement of such claim, at Wavenet's expense; and

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- 9.6.3 Wavenet is given sole authority to defend or settle the claim.
- 9.7 In the defence or settlement of any claim, Wavenet may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement without any additional liability or obligation to pay damages or other additional costs to the Customer.
- 9.8 Clauses 9.6 and 9.7 shall not apply to the extent that any claim or action is caused or exacerbated by:
- 9.8.1 any modification of the Services by anyone other than Wavenet;
- 9.8.2 the Customer's use of the Services in a manner contrary to Wavenet's instructions; or
- 9.8.3 the Customer continued use of the Services after notice of the alleged or actual infringement from Wavenet or any appropriate authority.
- 9.9 This clause 9 sets out the Customer's sole and exclusive rights and remedies, and Wavenet's entire obligations and liability, for infringement of any Intellectual Property Rights.
- 9.10 The Customer will not, and will procure that its personnel and subcontractors, do not do anything, whether by act or omission, during the Term or at any time thereafter to affect or imperil the validity of any Intellectual Property Rights owned, used or enjoyed by Wavenet and/or its Affiliates.
- 10. DATA PROTECTION**
- The parties acknowledge and agree that, for the Protected Data, the Customer (or the relevant Data Client) shall be the Controller and Wavenet shall be the Processor.
- 10.2 The Customer authorises Wavenet to Process the Protected Data during the Term as a Processor for the purpose set out in the Data Protection Annex to these terms and conditions.
- 10.3 Wavenet shall Process Protected Data in compliance with:
- 10.3.1 the obligations of Processors under Data Protection Laws in respect of the performance of its obligations under this Agreement; and
- 10.3.2 the terms of this Agreement.
- 10.4 The Customer shall (and shall if the Customer is not the Controller ensure that the relevant Controller shall) comply with:
- 10.4.1 all Data Protection Laws in connection with the Processing of Protected Data, the Services and/or Products and the exercise and performance of its respective rights and obligations under this Agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
- 10.4.2 the terms of this Agreement.
- 10.5 The Customer warrants to Wavenet that:
- 10.5.1 it has all necessary rights to authorise Wavenet to Process Protected Data in accordance with this Agreement and the Data Protection Laws;
- 10.5.2 all data sourced by the Customer for use in connection with the Services and/or Products, shall comply in all respects, including in terms of its collection, storage and Processing (which shall include the Customer providing all of the required fair processing notices and information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
- 10.5.3 it will not send any Protected Data to Wavenet that is not necessary for Wavenet to provide the Services and/or Products; and
- 10.5.4 its instructions to Wavenet relating to Processing of Protected Data will not put Wavenet in breach of Data Protection Laws, including with regard to International Transfers.
- 10.6 If Wavenet reasonably considers that any instructions from the Customer relating to Processing of Protected Data may put Wavenet in breach of Data Protection Laws, Wavenet will be entitled not to carry out that Processing and will not be in breach of this Agreement or otherwise liable to the Customer as a result of its failure to carry out that Processing.
- 10.7 The Customer shall remain fully liable for the acts or omissions of each Data Client as if they were its own.
- 10.8 Insofar as Wavenet Processes Protected Data on behalf of the Customer in connection with the provision of the Services and/or Products to the Customer under this Agreement, Wavenet:
- 10.8.1 unless required to do otherwise by Applicable Laws, shall (and shall ensure that any Sub-Processor shall) Process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this clause 10 and the Data Protection Annex to these terms and conditions (together the "Processing Instructions");
- 10.8.2 shall, if Applicable Laws require it to process Protected Data other than in accordance with the Processing Instructions, notify the Customer of any such requirement before Processing the Protected Data (unless Applicable Laws prohibit such information on grounds of public interest); and
- 10.8.3 promptly inform the Customer if Wavenet becomes aware of a Processing Instruction that, in Wavenet's opinion, infringes Data Protection Laws in the course of providing the Services and/or Products, provided that:
- (i) this shall be without prejudice to clauses 10.4 and 10.5; and
- (ii) to the maximum extent permitted by law, Wavenet shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any Processing in accordance with the Customer's Processing Instructions following the Customer's receipt of that information under this clause 10.8.3.
- 10.9 The Processing of Protected Data to be carried out by Wavenet under this Agreement as a Processor shall comprise the Processing set out in the Data Protection Annex to these terms and conditions, as may be updated from time to time as agreed in writing between the parties.
- 10.10 In respect of the Personal Data that Wavenet Processes as a Controller in connection with the Services and/or Products (for example, in relation to Customer account management and billing), the Customer will:
- 10.10.1 provide reasonable assistance to Wavenet, including to provide fair processing notices to the relevant Data Subjects and obtaining consents if necessary, to enable Wavenet to comply with the Data Protection Laws;
- 10.10.2 ensure that it is not subject to any prohibition or restriction that would:
- (i) prevent or restrict it from disclosing or transferring the relevant Personal Data to Wavenet, as required under this Agreement; or
- (ii) prevent or restrict Wavenet from Processing the Personal Data as appropriate in connection with this Agreement.
- 10.11 Wavenet shall implement and maintain, at its cost and expense, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
- 10.12 The Customer acknowledges and agrees that Wavenet may engage third-party Sub-Processors in connection with the provision of the Services and/or Products. Wavenet has entered or will enter into a written agreement with each Sub-Processor containing data protection obligations no less protective than those in this Agreement with respect to the protection of Protected

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- Data to the extent applicable to the nature of the Services and/or Products provided by each Sub-Processor.
- 10.13 Wavenet shall make available to the Customer the current list of Sub-Processors. Wavenet will inform the Customer of any proposed addition or replacement of a Sub-Processor thereby giving the Customer an opportunity to object (acting promptly, reasonably and in good faith towards Wavenet) to such changes. If the Customer does not provide any objections within 30 (thirty) days of the notice from Wavenet regarding the proposed changes to Sub-Processors, without limiting any of its rights or remedies under the Data Protection Laws, the Customer shall be deemed to have consented to such changes.
- 10.14 In the event that the Customer rejects any proposed addition or replacement of a Sub-Processor in accordance with clause 10.13, without prejudice to any other rights and remedies of Wavenet:
- 10.14.1 Wavenet shall not be liable to the Customer for any failure to perform or delay in the performance of its obligations under this Agreement arising as a result of such rejection by the Customer of any proposed addition or replacement of a Sub-Processor; and
- 10.14.2 the Customer shall bear all costs incurred by Wavenet in the procurement of a suitable replacement Sub-Processor to replace the rejected Sub-Processor (if applicable).
- 10.15 If Wavenet appoints a Sub-Processor, Wavenet shall:
- 10.15.1 prior to the relevant Sub-Processor carrying out any Processing activities in respect of the Protected Data, appoint such Sub-Processor under a written contract that imposes the same (in substance) terms to those imposed on Wavenet under this Agreement that is enforceable by Wavenet; and
- 10.15.2 remain fully liable for the acts and omissions of each Sub-Processor as if they were its own.
- 10.16 Wavenet shall ensure that all persons authorised by it (or by any Sub-Processor) to Process Protected Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality (except where disclosure is required in accordance with Applicable Laws, in which case Wavenet shall, where practicable and not prohibited by Applicable Laws, notify the Customer of any such requirement before such disclosure).
- 10.17 Wavenet shall, to the extent permitted under Applicable Laws, promptly notify the Customer if it receives a Data Subject Request relating to the Protected Data, Services and/or Products. Taking into account the nature of the Processing, Wavenet shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's (or the relevant Data Client's) obligation to respond to a Data Subject Request under Data Protection Laws, provided that if the number of Data Subject Requests exceeds 3 (three) per calendar month, the Customer shall pay Wavenet's charges calculated on a time and materials basis at Wavenet's then current prevailing rates for recording and referring the Data Subject Requests in accordance with this clause 10.17.
- 10.18 Wavenet shall provide such reasonable assistance to the Customer as the Customer reasonably requires (taking into account the nature of Processing and the information available to Wavenet) in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:
- 10.18.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Protected Data;
- 10.18.2 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly (as such term is defined in Data Protection Laws);
- 10.18.3 responding to requests for exercising Data Subjects' rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;
- 10.18.4 prior consultation with a Supervisory Authority regarding high risk processing; and
- 10.18.5 notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Data Security Incident, provided the Customer shall pay Wavenet's charges for providing the assistance in this clause 10.18, such charges to be calculated on a time and materials basis at Wavenet's then current prevailing rates.
- 10.19 Wavenet will only make an International Transfer of Protected Data if:
- 10.19.1 a competent authority or body of the United Kingdom or the European Commission (as applicable) makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;
- 10.19.2 Wavenet or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws; or
- 10.19.3 Wavenet or the relevant Sub-Processor is required to make the International Transfer to comply with Applicable Laws, in which case Wavenet will notify the Customer of such legal requirement prior to such International Transfer unless such Applicable Laws prohibit notice to the Customer on public interest grounds.
- 10.20 Wavenet shall maintain, in accordance with Data Protection Laws binding on Wavenet, written records of all categories of Processing activities carried out on behalf of the Customer.
- 10.21 Wavenet shall, in accordance with Data Protection Laws, upon prior written request make available to the Customer in respect of the Protected Data:
- 10.21.1 a summary of Wavenet's annual internal audit reports demonstrating Wavenet's compliance with its obligations as a Processor under Data Protection Laws; and
- 10.21.2 confirmation that the audit has not revealed any material vulnerability in Wavenet's systems, or to the extent that any such vulnerability was detected, that Wavenet has taken steps to remedy such vulnerability.
- 10.22 If the measures set out at clause 10.21 are not sufficient to confirm Wavenet's compliance with Data Protection Laws, Wavenet will allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) as is reasonably necessary to demonstrate Wavenet's compliance with its obligations in respect of the Protected Data under Article 28 of the UK GDPR (and under any Data Protection Laws equivalent to that Article 28), subject to the Customer:
- 10.22.1 giving Wavenet reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
- 10.22.2 the parties mutually agreeing upon the scope, timing and duration of the audit;
- 10.22.3 ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Laws);

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- 10.22.4 ensuring that such audit or inspection is undertaken during Normal Working Hours, with minimal disruption to Wavenet's business, the Sub-Processors' business and the business of other customers of Wavenet; and
- 10.22.5 paying Wavenet's reasonable charges for assisting with the provision of information and allowing for and contributing to inspections and audits.

- 10.23 In respect of any Data Security Incident involving Protected Data Wavenet shall, without undue delay, notify the Customer of the Data Security Incident and provide the Customer with relevant details of the Data Security Incident and the Customer, if it is not the Controller, shall ensure it provides such notification to the relevant Controller without undue delay.
- 10.24 If a party receives a compensation claim from any person relating to Processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the claim shall:
 - 10.24.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed); and
 - 10.24.2 consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible for paying the compensation.
- 10.25 Wavenet shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such format as the Customer reasonably requests within a reasonable time after the earlier of:
 - 10.25.1 the end of the provision of the relevant Services and/or Products related to the Processing of Protected Data; or
 - 10.25.2 once Processing by Wavenet of any Protected Data is no longer required for the purpose of Wavenet's performance of its relevant obligations under this Agreement, and delete existing copies (unless storage of any Protected Data is required by Applicable Laws and, if so, Wavenet shall inform the Customer of any such requirement).

11. CONFIDENTIALITY

- 11.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 11.2 Confidential Information of the disclosing party may be disclosed by the receiving party to its employees, Affiliates and professional advisors, provided that the receiving party procures that any such recipient complies with the provisions of this clause 11.
- 11.3 The obligations set out in this clause 11 shall not apply to Confidential Information which the receiving party can demonstrate:
 - 11.3.1 is or became publicly known other than through breach of this clause 11;
 - 11.3.2 was in possession of the receiving party prior to disclosure of the other party;
 - 11.3.3 was received by the receiving party from an independent third party who has full right of disclosure;
 - 11.3.4 was independently developed by the receiving party; or
 - 11.3.5 is required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement to the extent lawfully possible.

- 11.4 This clause 11 shall survive termination or expiry of this Agreement howsoever arising and shall continue thereafter for a period of three (3) years from the date of last disclosure or such other period as may be agreed by the parties.

12. NON-SOLICITATION

- 12.1 During the Term, and for a period of twelve (12) months following its termination or expiry, neither party shall directly or indirectly, and whether for its own benefit or for the benefit of another, solicit or induce or endeavour to solicit or induce any officer, employee, agent or authorised contractor to leave the other party's engagement, or engage any such individual without the other party's prior written consent.
- 12.2 Should either party engage the services of any officer, employee, agent or authorised contractor of the other party, whether the engagement is as an employee or as an independent contractor, during the Term or within twelve (12) months of expiry or termination thereof, the engaging party shall pay to the other party a fee of 50% of the starting annual salary of the said officer, employee, agent or authorised contractor of the other party.

13. LIABILITY

- 13.1 Except as expressly and specifically provided in this Agreement:
 - 13.1.1 the Customer assumes sole responsibility for the results obtained from its use of the Services, and for conclusions drawn from such use. Wavenet shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Wavenet by the Customer in connection with the Services, or any actions taken by Wavenet upon the Customer's direction; and
 - 13.1.2 Wavenet makes no warranty in respect of the supply of Services and all other terms, conditions and warranties, which may otherwise be implied into this Agreement by law or course of dealings between the parties, are hereby excluded to the fullest extent legally permissible.
- 13.2 Nothing in this Agreement shall operate to exclude or restrict:
 - 13.2.1 either party's liability for:
 - (a) death or personal injury resulting from that party's negligence or its employees' negligence (while acting in the course of their employment);
 - (b) any fraud, fraudulent misrepresentation or fraudulent misstatement;
 - (c) any indemnity under this Agreement;
 - (d) breach of any condition to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and/or
 - (e) anything for which the parties cannot at law limit or exclude their liability under Applicable Law; or
 - 13.2.2 the Customer's liability to pay the Charges in accordance with this Agreement.
- 13.3 Subject to clauses 13.2, 13.4 and 13.5 neither party's liability to the other party for breach of contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of its obligations under or in connection with this Agreement, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of any of that party's obligations under this Agreement in any Contract Year shall exceed 100% of the total Charges paid or payable by the Customer to Wavenet under this Agreement in respect of the Contract Year during which the acts or omissions giving rise to the liabilities occurred, excluding the obligation on the Customer to pay the Charges due and payable under this Agreement, and which obligation shall, in respect of the Customer, be in addition to and outside of the liability cap under this clause 13.3.

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- 13.4 Subject to clause 13.2, neither party shall be liable to the other party under or in connection with this Agreement whether arising in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any indirect, special or consequential losses or for any of the following losses or damages (in each case whether direct, indirect, special or consequential) even if such losses and/or damages were foreseeable or in the parties' reasonable contemplation or the relevant party was advised of the possibility of them in advance:
- 13.4.1 any loss of profits, loss of anticipated savings, loss of business opportunity and/or similar losses, depletion or loss of goodwill or reputation, wasted management time, wasted expenditure, loss of contract, loss of production, operating time or use;
 - 13.4.2 any pure economic loss or damages; and/or
 - 13.4.3 any loss to or interference with or corruption of any programs, information or data be it during delivery, storage or transmission of the same or otherwise provided always that each party will use reasonable endeavours to recover any lost or damaged data from the most recently available back up;
- 13.5 Subject to clause 13.2 and clause 13.4, Wavenet shall not be liable to the Customer under or in connection with this Agreement whether arising in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any of the following losses or damages (in each case whether direct, indirect, special or consequential) even if such losses and/or damages were foreseeable or in the parties' reasonable contemplation or the relevant party was advised of the possibility of them in advance:
- 13.5.1 the liability of the Customer to third parties; and/or
 - 13.5.2 any and all problems, delays, delivery failures and all other loss of damage or costs or expenses incurred by the Customer's equipment; the Customer's failure to maintain internet connectivity; or any breach of the Customer's obligations under this Agreement.
- 13.6 The Customer acknowledges that, subject to clause 13.5, Wavenet accepts no responsibility or liability to the Customer, or any third party, for:
- 13.6.1 any pre-existing defects at the Customer Premises or property;
 - 13.6.2 any Malware affecting the Customer's System or Customer equipment;
 - 13.6.3 any failure of any third-party system, equipment or apparatus;
 - 13.6.4 any failure by the Customer to maintain, duplicate, or backup copies of its Systems and/or files, it being expressly agreed that it is the Customer's responsibility to maintain adequate backup of its Systems; and/or
 - 13.6.5 the disposal of any computer systems, computer products or any waste product associated with the Services save where Wavenet have expressly agreed to provide such disposal service in writing upon payment of an agreed fee.
- 13.7 The parties acknowledge and agree that should any of the below circumstances or events occur that either directly or indirectly affects Wavenet's ability to perform the Services, Wavenet shall not be liable for any failure to perform the relevant Services to the extent that:
- 13.7.1 any act or omission of the Customer, its agents, representatives or End Users prevents or delays Wavenet from complying with its obligations ("Customer Default") including but not limited to:
 - (a) the Customer's failure to comply with its obligations under this Agreement;
 - (b) any failure or delay of the Customer in complying with Wavenet's reasonable instructions, in providing any information requested by Wavenet or in providing any approvals related to the Services prevents or delays Wavenet from complying with its obligations;
 - 13.7.2 an incident results from an action or omission of any third party other than Wavenet (or its sub-contractors or third-party providers) that affects Wavenet's ability to perform the relevant Services; or
 - 13.7.3 the parties pre-agree in writing and/or pre-plan any undertakings such as preventative maintenance or planned infrastructure changes in advance that affects Wavenet's ability to perform the relevant Services during that agreed period of time.
- 13.8 Each party will take reasonable steps to mitigate a loss, including where that loss occurs as a result of anything that may give rise to a claim under an indemnity.
- 13.9 The parties agree that the limitations and exclusions of liability set out in this Agreement reflect the allocation of risk agreed between them and that such limitations and exclusions of liability are proportionate to the Charges to be paid to Wavenet. The Customer acknowledges and accepts that Wavenet has recommended that the Customer effects insurance for any losses or liabilities caused by any act or omission of Wavenet that shall not be recoverable from Wavenet under this Agreement.
- 13.10 This clause 13 will survive termination of the Agreement.

14. TERMINATION

- 14.1 Either party may terminate this Agreement, or any one or more of the Services, with immediate effect by giving written notice to other if:
- 14.1.1 either party commits a material breach of its obligations under the Agreement and, if such breach is remediable, fails to remedy such breach within thirty (30) days of notice in writing to do so; and/or
 - 14.1.2 either party takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.
- 14.2 Wavenet may terminate this Agreement, or any one or more of the Services, with immediate effect, by giving written notice to the Customer if:
- 14.2.1 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
 - 14.2.2 the Customer's financial position deteriorates to such an extent that, in Wavenet's opinion, the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;
 - 14.2.3 the Customer fails to pay any amount due under the Agreement on the due date for payment and fails to make payment within fourteen (14) days of notice requiring payment being served upon the Customer;
 - 14.2.4 there is a change of Control of the Customer;
 - 14.2.5 the Customer does or allows to be done, anything which, in Wavenet's reasonable opinion will, or may have, the effect of jeopardising the operation of the Services, Equipment or any of Wavenet's Network, systems, equipment, services and/or telecommunications network;
 - 14.2.6 Wavenet reasonably suspects the Services are being used for any illegal, improper, immoral, fraudulent or unlawful purpose, or in a manner prejudicial to the interests of the Customer and/or

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Wavenet, or the Customer acts in a threatening or abusive manner; and/or

14.2.7 if the Customer is in breach of clause 17.

14.3 Upon expiry or termination of this Agreement for any reason:

14.3.1 the Customer shall pay to Wavenet any Early Termination Charge in respect of the Agreement, or Services to which the notice of termination applies;

14.3.2 the Customer shall immediately pay to Wavenet all outstanding unpaid invoices, together with any interest due and all Charges in respect of Services supplied but not invoiced, for which Wavenet will submit an invoice to the Customer for immediate payment;

14.3.3 the Customer shall return to Wavenet, at its own cost, all Equipment; and

14.3.4 if the Customer fails to return the Equipment in accordance with clause 14.3.3, then Wavenet may enter the Customer Premises to take possession of such Equipment and/or Wavenet Materials. Until the Equipment or Wavenet Materials have been returned, the Customer will be solely responsible for any risk to the Equipment and/or Wavenet Materials and shall indemnify Wavenet for the full replacement cost of either the Equipment or Wavenet Materials.

14.4 Termination or expiry of this Agreement will not affect the accrued rights, remedies, obligations and liabilities of either party and the continuation of any provision expressly stated to survive or implicitly surviving.

14.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry will continue in full force and effect.

15. SUSPENSION

15.1 Without affecting any other right or remedy available to it, Wavenet may suspend the supply of all or part of the Services under this Agreement or any other agreement between the Customer and Wavenet until further notice without liability to the Customer having given the Customer reasonable notice, where practicable to do so, either orally (confirming such notification in writing) or in writing in the event that:

15.1.1 Wavenet is entitled to terminate this Agreement or any one or more of the Services;

15.1.2 suspension is necessary to comply with Applicable Law;

15.1.3 any maintenance or repair is necessary (for the purposes of new provision, updating facilities, general maintenance or otherwise) or required to any relevant carrier or other third-party network or related systems or equipment (for the avoidance of doubt, in the event of emergency maintenance or repair, Wavenet may not be able to give any advance notice);

15.1.4 an Emergency occurs and/or Wavenet is obliged to comply with an order, instruction or request of the UK Government, an emergency services organisation or other competent administrative or regulatory authority (including without limit, OFCOM or the Phone-paid Services Authority) (for the avoidance of doubt, Wavenet may not be able to give any advance notice);

15.1.5 Wavenet has reasonable grounds to believe that any of the Services are being used fraudulently, unlawfully or by an unauthorised third party or in an unauthorised or fraudulent manner or that there has been or is likely to be a breach of security (including a breach of the Customer's obligations under clause 5) (for the avoidance of doubt, Wavenet may not be able to give any advance notice);

15.1.6 the Customer fails to pay undisputed sums due under the Agreement on the due date for payment in accordance with clause 6;

15.1.7 the Customer becomes, subject to any of the events listed in clauses 14.1.2, 14.2.1 and 14.2.2;

15.1.8 the Customer fails to rectify a Customer Default and Wavenet is prevented from performing its contractual obligations and/or incurs loss due to such Customer Default;

15.1.9 there are reasonable grounds for Wavenet to believe that the health and safety of its employees may be compromised in the performance of the Services; or

15.1.10 Wavenet personnel are abused or mistreated during the performance of the Services.

15.2 The Customer shall reimburse to Wavenet all reasonable costs and expenses incurred by the implementation of a suspension pursuant to clauses 15.1.1, 15.1.5, 15.1.6, 15.1.7, 15.1.9, 15.1.10 and/or 15.1.11 and the recommencement of the provision of the Services as appropriate.

16. FORCE MAJEURE

16.1 Neither party shall be in breach of this Agreement or otherwise liable to the other party for any failure or delay in the performance of its obligations under this Agreement and the time for performance of such obligations shall be extended accordingly where such failure or delay results from a Force Majeure Event.

16.2 The party prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event will;

16.2.1 promptly notify the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

16.2.2 use reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

16.3 If any Force Majeure Event prevails for a continuous period of more than thirty (30) days, either party may terminate the affected part(s) of this Agreement by giving seven (7) days' written notice to the other.

17. ANTI-BRIBERY AND ANTI-CORRUPTION

17.1 Each party shall, and shall use reasonable endeavours to procure that its officers, employees, agents and any other persons in relation to the provision or receipt of the Services for and on behalf of it in connection with this Agreement, shall:

17.1.1 comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Laws");

17.1.2 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010;

17.1.3 not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;

17.1.4 not do or omit to do any act or thing that constitutes or may constitute an offence under Anti-Bribery Laws; and

17.1.5 provide the other party with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Anti-Bribery Laws.

17.2 Each party shall promptly report to the other party any request or demand for any financial or other advantage of any kind received in connection with the performance of this Agreement by it or by its officers, employees, agents or any other person who performs or receives (as applicable) the Services for or on behalf of it in connection with this Agreement.

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18. FRAUD AND SECURITY

- 18.1 In the event of any illegal, fraudulent or unauthorised use of the Services, Wavenet reserves the right (at Wavenet's sole discretion) to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer uses in connection with the Services.
- 18.2 Save to the extent expressly provided as a Service by Wavenet under this Agreement, the Customer remains at all times responsible for:
- 18.2.1 preventing unauthorised or fraudulent use of the Services; and
 - 18.2.2 maintaining the security of all systems, network elements and equipment within its (or its employees', agents' or contractors') control.

19. GENERAL

- 19.1 Wavenet may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.
- 19.2 The Customer shall not, without the prior written consent of Wavenet, (and such consent shall not be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.3 Subject to clause 19.4, any notice, invoice or other document that may be given by either party under this Agreement shall be in writing (except as provided otherwise) sent for the attention of the relevant person, and to the postal address given in an Order (or such other postal addressor person as the relevant party may notify to the other party) and shall be delivered personally or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting or if earlier upon receipt and, if deemed receipt under this clause 19.3 is not within Normal Working Hours, at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was sent in the case of post, that the envelope containing the notice was properly addressed and posted.
- 19.4 Any notice, communication, invoice or document that may be given by Wavenet under this Agreement may be given by email and shall be deemed to have been received 24 hours from delivery if no notice of delivery failure is received.
- 19.5 Any director or representative of the Customer who signs the Order and/or any variation on behalf of the Customer will be deemed an authorised signatory and thereby Wavenet shall be entitled to rely on such signatory as binding the Customer to the obligations in this Agreement in all respects.
- 19.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of the Agreement.
- 19.7 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law will prevent or restrict the further exercise of that or any other right or remedy.
- 19.8 Nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or

authorise either party to make or enter into any commitments for or on behalf of the other party.

- 19.9 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter.
- 19.10 Each party acknowledges that in entering into this Agreement that it does not rely on and will have no remedies in respect of any statement, representation, assurance or warranty, whether made innocently or negligently, that is not set out in the Agreement. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Agreement.
- 19.11 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 19.12 Wavenet may vary and amend these terms and conditions or Acceptable Use Policy at any time. By continuing to use the Services after Wavenet posts any such variation or amendment at <https://www.wavenetuk.com/terms-conditions/> the Customer accepts the terms as amended.
- 19.13 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter of formation, shall be governed by, and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts. Some of these laws have particular relevance to technical testing engagements, particularly the Computer Misuse Act, Human Rights Act, and Data Protection Act. The Customer agrees to indemnify Wavenet against prosecution for providing the Services.

Annex - Data processing details

The capitalised terms used in this Annex, have the meanings provided in clause 1. The Processing details set out in this Annex are subject to any specific Processing details set out in or otherwise incorporated into the Order.

1 Subject Matter of Processing:

For the purposes of Wavenet performing this Agreement.

2 Duration of the processing:

The Processing shall continue for the duration of this Agreement and for any period thereafter that Wavenet continues to Process any Protected Data.

3 Nature and purpose of the processing:

To perform and/or deliver (as applicable) the Services as set out in this Agreement and as further instructed by the Customer.

4 Type of Personal Data:

Names, telephone numbers, email addresses, addresses of the Data Subjects set out below and any other Personal Data required to be provided to Wavenet as Protected Data in the performance of this Agreement, including without limitation the performance and/or delivery (as applicable) of the Services.

5 Categories of Data Subjects:

Employees and customers (being natural persons) of the Customer or the relevant Controller.