

Wavenet Data Processing Terms and Conditions

BACKGROUND

These data processing terms and conditions ("**DPTerms**") shall govern the processing of Personal Data of Data Subjects in the context of the Products and Services and shall be deemed to be incorporated into the Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised terms used in these DPTerms shall have the following meanings for the purposes of these DPTerms only:

"Data Client"	means in relation to any Protected Data which ever of: (a) the Customer or its Affiliates; or (b) any customer or end-customer of the Customer; is the Data Controller in relation to that Protected Data;
"Data Protection Laws"	means all Applicable Laws relating to data protection, the processing of personal data and privacy, including without limitation: (a) the Data Protection Act 2018; (b) UK GDPR; and (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and references to " Data Controller ", " Data Processor ", " Data Subjects ", " Personal Data ", " Process ", " Processed ", " Processing ", " Processor " and " Supervisory Authority " shall have the meanings set out in and shall be interpreted in accordance with such Data Protection Laws;
"Data Protection Losses"	means all liabilities, including all 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, to the extent permitted by Applicable Law: (a) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; (b) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (c) the reasonable costs of compliance with investigations by a Supervisory Authority;
"Data Security Incident"	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;
"International Transfer"	a transfer to a country outside of the United Kingdom or European Economic Area (" EEA ") (as it is made up from time to time) of Protected Data which is undergoing Processing, or which is intended to be Processed after transfer;
"Principal Agreements"	the agreements between Wavenet and the Customer for the provision of telecommunications and/or IT related Services and/or Products;
"Processing Instructions"	has the meaning given to that term in clause 1.2;
"Protected Data"	means Personal Data which has been passed to Wavenet and is required to be Processed under the Agreement and these DPTerms by Wavenet as a Data Processor, as described in Schedule 1 of these DPTerms;
"Sub- Processor"	means any third party appointed by Wavenet to Process the Protected Data; and
"UK GDPR"	means the United Kingdom General Data Protection Regulation, Retained Regulation (EU) 2016/679.

1.2 All other capitalised terms, which are not defined in paragraph 1.1 shall have the meanings stated in the MSA.

2. DATA PROCESSOR AND DATA CONTROLLER

- 2.1 The parties acknowledge and agree that, for the Protected Data, the Customer (or the relevant Data Client) shall be the Data Controller and Wavenet shall be the Data Processor or sub-processor.
- 2.2 The Customer authorises Wavenet, pursuant to the Agreement, to Process the Protected Data pursuant to these DPTerms as a Data Processor or sub-processor for the purpose set out in Schedule 1.
- 2.3 Wavenet shall Process Protected Data in compliance with:
 - 2.3.1 the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under these DPTerms; and
 - 2.3.2 these DPTerms
- 2.4 The Customer shall (and shall if the Customer is not the Data Controller ensure that the relevant Data Controller shall) comply with:
 - 2.4.1 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 these DPTerms, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
 - 2.4.2 these DPTerms
- 2.5 The Customer warrants to Wavenet that:
 - 2.5.1 it has all necessary rights to authorise Wavenet to Process Protected Data in accordance with these DPTerms and the Data Protection Laws;
 - 2.5.2 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;
 - 2.5.3 it will not send any Protected Data to Wavenet which is not necessary for Wavenet to provide the Services and/or Products;
 - 2.5.4 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; and
 - 2.5.5 it has undertaken due diligence in relation to Wavenet's Processing operations, and it is satisfied that:
 - (a) Wavenet's Processing operations are suitable for the purposes for which the Customer proposes to use the Services and/or Products and engage Wavenet to Process the Protected Data; and
 - (b) Wavenet has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws
- 2.6 If the 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 shall be entitled not to carry out that Processing and will not be in breach of these DPTerms or otherwise liable to the Customer as a result of its failure to carry out such Processing.
- 2.7 The Customer shall remain fully liable for the acts or omissions of each Data Client as if they were its own.

3. INSTRUCTIONS AND DETAILS OF PROCESSING

- 3.1 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 the Agreement, Wavenet:
 - 3.1.1 unless required to do otherwise by Applicable Law, 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 3 and Schedule 1 - Data Processing Details together ("**Processing Instructions**");
 - 3.1.2 shall, if Applicable Law requires 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 Law prohibits such information on grounds of public interest); and
 - 3.1.3 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:
 - (a) this shall be without prejudice to clauses 2.4 and 2.5; and
 - (b) 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; and
- 3.2 The Processing of Protected Data to be carried out by Wavenet under these DPTerms as a Data Processor shall comprise the Processing set out in Schedule 1 - Data Processing Details, as may be updated from time to time as agreed between the parties.
- 3.3 In respect of the Personal Data which Wavenet Processes as a Data Controller in connection with the Services and/or Products (for example, in relation to Customer account management and billing), the Customer shall:
 - 3.3.1 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;
 - 3.3.2 ensure that it is not subject to any prohibition or restriction which would:
 - (a) prevent or restrict it from disclosing or transferring the relevant Personal Data to Wavenet, as required under the Agreement or these DPTerms; or

- (b) prevent or restrict Wavenet from Processing the Personal Data as envisaged under the Agreement or these DPTerms.

4. TECHNICAL AND ORGANISATIONAL MEASURES

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

5. USING STAFF AND OTHER PROCESSORS

- 5.1 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 not less protective than those in these DPTerms with respect to the protection of Protected Data to the extent applicable to the nature of the Services and/or Products provided by each Sub-Processor.
- 5.2 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 days of 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.
- 5.3 In the event that the Customer rejects any proposed addition or replacement of a Sub-Processor in accordance with clause 5.2 without prejudice to any other rights and remedies of Wavenet:
 - 5.3.1 Wavenet shall not be liable to the Customer for any failure to perform or delay in the performance of its obligations under these DPTerms and/or Agreement arising as a result of such rejection by the Customer of any proposed addition or replacement of a Sub-Processor; and
 - 5.3.2 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).
- 5.4 If Wavenet appoints a Sub-Processor, Wavenet shall:
 - 5.4.1 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 which imposes the same (in substance) terms to those imposed on Wavenet under these DPTerms that is enforceable Wavenet; and
 - 5.4.2 remain fully liable for the acts and omissions of each Sub-Processor as if they were its own
- 5.5 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 Law, in which case Wavenet shall, where practicable and not prohibited by Applicable Law, notify the Customer of any such requirement before such disclosure).

6. ASSISTANCE WITH THE CUSTOMER'S COMPLIANCE AND DATA SUBJECT RIGHTS

- 6.1 Wavenet shall, to the extent permitted under Applicable Law, promptly notify the Customer if it receives a Data Subject Request relating to the 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 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 6.1.
- 6.2 Wavenet shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of Processing and the information available to Wavenet) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:
 - 6.2.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Protected Data;
 - 6.2.2 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);
 - 6.2.3 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;
 - 6.2.4 prior consultation with a Supervisory Authority regarding high risk processing; and
 - 6.2.5 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 6.2, such charges to be calculated on a time and materials basis at Wavenet's then current prevailing rates.

7. INTERNATIONAL DATA TRANSFERS

- 7.1 Where Wavenet engages Sub-Processors in accordance with clause 5, such Sub-Processors may be based outside the UK including in a country without an adequacy decision from the EU Commission. Wavenet is responsible for the Sub-Processing and performance of its Sub-Processors in accordance with Data Protection Laws and will ensure that such Sub-Processing will be on terms substantially equivalent to these DPTerms.

- 7.2 Where Wavenet makes an International Transfer including where such International Transfer is to a country without an adequacy decision from the EU Commission, Wavenet will provide appropriate safeguards for such International Transfer, in accordance with Data Protection Laws.
- 7.3 If Wavenet or the relevant Sub-Processor is required to make an International Transfer to comply with Applicable Laws, Wavenet shall 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.

8. RECORDS, INFORMATION AND AUDIT

- 8.1 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.
- 8.2 Wavenet shall, in accordance with Data Protection Laws, upon prior written request make available to the Customer:
- 8.2.1 a summary of the audit reports demonstrating Wavenet's compliance with their respective obligations as a Data Processor under Data Protection Laws; and
 - 8.2.2 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.
- 8.3 If the measures set out at clause 8.2 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 under Article 28 of the UK GDPR (and under any Data Protection Laws equivalent to that Article 28), subject to the Customer:
- 8.3.1 giving Wavenet reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
 - 8.3.2 the parties mutually agreeing upon the scope, timing and duration of the audit;
 - 8.3.3 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 Law);
 - 8.3.4 ensuring that such audit or inspection is undertaken during Business Hours, with minimal disruption to Wavenet's business, the Sub-Processors' business and the business of other customers of Wavenet; and
 - 8.3.5 paying Wavenet's reasonable charges for assisting with the provision of information and allowing for and contributing to inspections and audits.

9. BREACH NOTIFICATION

- 9.1 In respect of any Data Security Incident involving Protected Data;
- 9.1.1 Wavenet shall, without undue delay, notify the Customer of the Data Security Incident;
 - 9.1.2 Wavenet shall, without undue delay, provide the Customer with relevant details of the Data Security Incident; and
 - 9.1.3 the Customer, if it is not the Data Controller, shall ensure it provides such notification to the relevant Data Controller without undue delay.

10. DELETION OR RETURN OF PROTECTED DATA AND COPIES

- 10.1 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:
- 10.1.1 the end of the provision of the relevant Services and/or Products related to the Processing of Protected Data; or
 - 10.1.2 once Processing by Wavenet of any Protected Data is no longer required for the purpose of Wavenet's performance of its relevant obligations under these DP Terms,
- and delete existing copies (unless storage of any Protected Data is required by Applicable Law and, if so, Wavenet inform the Customer of any such requirement).

11. LIABILITY AND COMPENSATION CLAIMS

- 11.1 Subject to clauses 11.2, 11.3 and 11.4 Wavenet shall only be liable to the Customer for direct losses incurred by or awarded against the Customer (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with these DP Terms only to the extent caused by the Processing of Protected Data under these DP Terms and directly resulting from Wavenet's breach of these DP Terms.
- 11.2 In no circumstances shall Wavenet be liable under these DP Terms or the Agreement to the extent that any losses (or the circumstances giving rise to them) are contributed to or caused by any breach of (i) these DP Terms or the Agreement (including in accordance with clause 3.1.3(b)), or (ii) the Data Protection Laws by the Customer, relevant Data Client or any third party.
- 11.3 Subject to clause 11.4, the total liability of Wavenet, arising under or in connection with the performance or contemplated performance of its obligations of these DP Terms, the Data Protection Laws and all Agreement, to the Customer and Customer Affiliates, all Data Clients and all Data Subjects in respect of all Data Protection Losses, shall not exceed the lower of 100% of the annual charges paid or payable by the Customer under the directly affected Agreement or the applicable cap to such liabilities in such Agreement.
- 11.4 Nothing in these DP Terms excludes or limits the liability of Wavenet for:
- 11.4.1 death or personal injury caused by Wavenet's negligence;

- 11.4.2 fraud or fraudulent misrepresentation; or
- 11.4.3 any liability which cannot by law be limited or excluded.
- 11.5 If a party receives a compensation claim from a person relating to Processing of Protected Data ("**Data Compensation**"), it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall:
 - 11.5.1 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
 - 11.5.2 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.
- 11.6 This clause 11 is intended to apply to the allocation of liability for Data Protection Losses as between the parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:
 - 11.6.1 to the extent not permitted by Applicable Law (including Data Protection Laws); and
 - 11.6.2 that it does not affect the liability of either party to any Data Subject

SCHEDULE 1 - DATA PROCESSING DETAILS

- 1 Subject-matter of processing:**
For the purposes of Wavenet performing the Agreement.
- 2 Duration of the processing:**
The Processing shall continue for the duration of the 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 and/or Products as set out in the 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 the Wavenet as Protected Data in the performance of the Agreement, including without limitation the performance and/or delivery (as applicable) of the Services and/or Products.
- 5 Categories of Data Subjects:**
Employees and customers (being natural persons) of the Customer or the relevant Data Controller.