

## Wave 9 – Data Processing Addendum (GDPR)

This Data Processing Addendum ("DPA") forms part of the General Terms and Conditions for Wave 9 Services ("Principal Agreement") between: (i) Wave 9 Managed Services Limited, ("Wave 9", the "Data Processor"); and (ii) You, ("Customer", the "Data Controller").

### WHEREAS:

- 1) Under a written agreement ("the Principal Agreement") between the Customer and Wave 9 provides to the Customer some or all of the Services described in summary in Schedule 1.
- 2) The provision of the Services by Wave 9 involves it in processing the Personal Data on behalf of the Customer.
- 3) Under EU Regulation 2016/679 General Data Protection Regulation ("the GDPR") (Article 28, paragraph 3), the Data Controller is required to have in place an agreement in writing between the Data Controller and any organisation which processes personal data on its behalf governing the processing of that data.
- 4) This DPA is appended to the Principal Agreement to ensure compliance with the said provisions of the GDPR in relation to all processing of the Personal Data by the Data Processor for the Data Controller.
- 5) The terms of this DPA are to apply to all processing of Personal Data carried out for the Data Controller by the Data Processor and to all Personal Data held by the Data Processor in relation to all such processing.

## 1 Definitions and Interpretation

- 1.1 In this DPA, unless the context otherwise requires, the following expressions shall have the following meanings, i:

**"Controller", "Data Subject" "Personal Data", "Personal Data Breach", "Process/Processing", "Processor" and "Data Subject"** shall will have the meanings ascribed to them in Directive 95/46/EC **"The Directive"**, and from 25 May 2018 the EU General Data Protection Regulation 2016/679 ("The GDPR");

**"Data Protection Legislation"** means collectively

- (i) the Directive; and,
- (ii) other applicable legislation of the European Union; and,
- (iii) applicable local legislation relating to the Processing of Personal Data and/or the protection of an individual's privacy; and,
- (iv) from 25 May 2018, the GDPR, and any successor legislation or regulation; and,
- (v) any binding guidance or code of practice issued by a Supervisory Authority; "Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, "GDPR" means General Data Protection

Regulation (EU) 2016/679 repealing the Directive, and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements the GDPR); and “Supervisory Authority” means any competent authority responsible for supervising compliance with Data Protection Legislation.

“**Services**” means those services and facilities which are provided by the Data Processor to the Data Controller under the Principal Agreement.

“**Supervising Authority**” shall mean the Information Commissioners Office or any other such supervisory body legally appointed for the purposes of overseeing compliance with The Directive.

“**Sub-Processor**” means a sub processor appointed by the Data Processor to process the Personal Data.

“**Sub-Processing Agreement**” means an agreement between the Data Processor and a Sub-Processor governing the Personal Data processing carried out by the Sub-Processor.

“**Transfer**” shall mean the provision of access to and/or the transfer of the personal data.

## **2 Scope and Application of this DPA**

- 2.1 This DPA will apply only to the extent that Personal Data is provided by the Customer to Wave 9 or otherwise acquired by Wave 9 in relation to the Principal Agreement. For the purposes of this Condition, “Customer” will also mean any company that is from time to time in the same group (as defined by s.474(1) Companies Act 2006) which provides Personal Data to Wave 9 or in relation to which Wave 9 acquires or generates Personal Data in relation to the Principal Agreement.
- 2.2 The provisions of this DPA shall apply whether such Personal Data is held at the date of this DPA or received afterwards.
- 2.3 The provisions of this DPA supersede any other arrangement, understanding, or agreement including, but not limited to, the Service Agreement made between the Parties at any time relating to the Personal Data.
- 2.4 This DPA shall continue in full force and effect for so long as the Data Processor is processing Personal Data on behalf of the Data Controller, and thereafter as provided in Clauses 9 and 10.

## **3 Provision of the Services and Processing Personal Data**

- 3.1 The Parties acknowledge that the Customer is the Data Controller and Wave 9 is the Data Processor in respect of all personal data processed by Wave 9 for the purpose of the Principal Agreement and the Customer alone as Data Controller shall determine the purposes for which and the manner in which such Personal Data will be processed by Wave 9.

## 4 Data Protection Compliance

- 4.1 Both Parties shall comply at all times with the GDPR and other Data Protection legislation and applicable laws and shall not perform their obligations under this DPA or any other agreement or arrangement between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 4.2 The Customer, as Data Controller, hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.
- 4.3 Wave 9 shall, unless otherwise required by law (as per Article 29 of the GDPR):
- (a) process the personal data only on and in accordance with the written instructions of the Customer and to the extent necessary for the proper performance of the Principal Agreement and shall not process the personal data for any other purpose, unless required to do so by law;
  - (b) not modify, amend, or alter the contents of the personal data except as required or permitted by the Principal Agreement or with the Customer's prior written consent or written instruction;
  - (c) implement the appropriate technical and organisational measures (including, where relevant, those prescribed elsewhere in the Principal Agreement) to protect the personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access, and against all other unlawful forms of processing;
  - (d) ensure that it takes reasonable steps to ensure the reliability of any of the personnel who have access to the personal data; that only those personnel who need to have access to the personal data are granted access to it; that such access is granted only for the purposes of the proper performance of the Principal Agreement; and that all personnel are informed of the confidential nature of the personal data and comply with the obligations set out in this DPA;
  - (e) notify the Customer without undue delay, and in any event, no later than 12 hours from the time it comes to Wave 9's attention, that any personal data has been the subject of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access, or any other unlawful form of processing, and provide any information that may reasonably be required relating to that Personal Data Breach;
  - (f) notify the Customer within 7 days of receipt by it of a request or notice from any data subject to have access to that person's personal data held by it; and provide the Customer with full co-operation and, at the Customer's cost, provide assistance in relation to any complaint or request, including providing the Customer with any relevant personal data it holds, within the timescales provided by the request or notice or as otherwise required by the Customer;
  - (g) provide, at the Customer's costs reasonable assistance to the Customer in complying with its obligations under the GDPR and with any data protection impact assessments, and prior consultations with Supervising Authorities;
  - (h) not retain the personal data for longer than is necessary to properly perform of the Contract and upon expiry of the Contract for whatever reason, or at any other time at the Customer's request, securely destroy or immediately return to the Customer

all the personal data and certify that no copies have been made or retained by Wave 9 or any third party acting on its behalf, provided that such secure destruction or return does not prevent Wave 9 from fulfilling its obligations under the Principal Agreement.

## **5 Appointment of Sub-Processors**

- 5.1 The Customer authorises Wave 9 to appoint, and permits each Sub-Processor appointed, to appoint Sub-Processors.
- 5.2 Wave 9 may continue to use those Sub-Processors already engaged by Wave 9 as listed alongside summary service descriptions in Schedule 1.
- 5.3 Wave 9 shall give the Customer prior written notice of the appointment of any new Sub-Processor, including full details of the Processing to be undertaken by the Sub-Processor. If, within 5 working days of receipt of that notice, the Customer notifies Wave 9 in writing of any objections on reasonable grounds to the proposed appointment:
- 5.4 Wave 9 shall not appoint, or disclose any Customer Personal Data to, any proposed Sub-Processor until reasonable steps have been taken to address the objections raised by the Customer and the Customer has been provided with a reasonable written explanation of the steps taken; and in the event that such actions should fail to satisfy the objections raised:
  - (a) Wave 9 shall work with the Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Sub-Processor; and,
  - (b) where such a change cannot be made within 90 working days from Wave 9's receipt of the Customer's notice, notwithstanding anything in the Principal Agreement, the Customer may by written notice to Wave 9 with immediate effect terminate the Principal Agreement to the extent that it relates to the Services which require the use of the proposed Sub-Processor.
- 5.5 Before any Transfer to a Sub-Processor, Wave 9 shall ensure that the Sub-Processor enters into a contract on terms which provide that the Sub-Processor has the same (mutatis mutandis) obligations as Wave 9 as are set out in this DPA
- 5.6 In the event of a Transfer from a country within the European Economic Area ("EEA") to a country outside the EEA (except if the Transfer is to a country that the European Commission has recognised as providing adequate protection) that Transfer shall be on the basis of the Model Contract Clauses as issued by the European Commission pursuant to the Regulation except where the relevant Data Protection Legislation provides for a derogation from this requirement.

## **6 Audit Rights**

- 6.1 Without prejudice to any other right of audit that the Customer may have, Wave 9 shall, upon the Customer giving reasonable notice, allow the Customer or its nominated representatives such access to its (and its agents', subsidiaries' and subcontractors') premises, facilities, equipment, information and records as may be reasonably required by the Customer from time to time to assess Wave 9's compliance with the conditions of this DPA.

## **7 Liability and Indemnity**

7.1 The Data Controller shall be liable for, and shall indemnify (and keep indemnified) the Data Processor in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor, arising directly or in connection with:

- (a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
- (b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
- (c) any breach by the Data Controller of its obligations under this Agreement,

except to the extent that the Data Processor, or Sub-Processor is liable under sub-Clause 7.2.

7.2 The Data Processor shall be liable for, and shall indemnify (and keep indemnified) the Data Controller in respect of any and all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Controller arising directly or in connection with the Data Processor's Personal Data processing activities that are subject to this Agreement:

- (d) only to the extent that the same results from the Data Processor's, or a Sub-Processor's, breach of this Agreement; and
- (e) not to the extent that the same is or are contributed to by any breach of this Agreement by the Data Controller.

7.3 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor under sub-Clause 7.1.

7.4 Nothing in this Agreement (and in particular, this Clause 6) shall relieve either Party of, or otherwise affect, the liability of either Party to any Data Subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the Supervising Authority and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.

## **8 Intellectual Property Rights**

8.1 All copyright, database rights, and other intellectual property rights subsisting in the Personal Data (including but not limited to any updates, amendments, or adaptations to the Personal Data made by either the Data Controller or the Data Processor) shall belong to the Data Controller or to any other applicable third party from whom the Data Controller has obtained the Personal Data under licence (including, but not limited to, data subjects, where applicable). The Data Processor is licensed to use such Personal Data under such rights only for the duration for which Services are provided to the

Customer under the Principal Agreement for the purposes of the Services, and in accordance with this DPA.

## **9 Confidentiality of Personal Data**

- 9.1 The Data Processor shall maintain the Personal Data in confidence, and in particular, unless the Data Controller has given written consent for the Data Processor to do so, the Data Processor shall not disclose any Personal Data supplied to the Data Processor by, for, or on behalf of, the Data Controller to any third party. The Data Processor shall not process or make any use of any Personal Data supplied to it by the Data Controller otherwise than in connection with the provision of the Services to the Data Controller.
- 9.2 The Data Processor shall ensure that all personnel who are to access and/or process any of the Personal Data are contractually obliged to keep the Personal Data confidential.
- 9.3 The obligations set out in in this Clause 9 shall continue after the cessation of the provision of Services by the Data Processor to the Data Controller.
- 9.4 Nothing in this DPA shall prevent either Party from complying with any requirement to disclose Personal Data where such disclosure is required by law. In such cases, the Party required to disclose shall notify the other Party of the disclosure requirements prior to disclosure, unless such notification is prohibited by law.

## **10 Severability**

- 10.1 Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.
- 10.2 Nothing within this contract relieves Wave 9 as a processor of its own direct responsibilities and liabilities under The GDPR.
- 10.3 The provisions of this DPA shall survive the Principal Agreement.

## **11 Law and Jurisdiction**

- 11.1 This DPA (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 11.2 Any dispute, controversy, proceedings or claim between the Parties relating to this DPA (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## SCHEDULE 1 – SERVICES SUMMARY

| <b>Service</b>                | <b>Summary Description</b>   | <b>Data Controller</b> | <b>Data Processor</b> | <b>Sub-Processors</b>  |
|-------------------------------|--|------------------------|-----------------------|--|
| WaveConnect Broadband         | A clear channel, bandwidth only broadband service remotely managed by Wave 9 for functionality and availability.           | Customer               | Wave 9                | Gamma<br>Talk Talk Business<br>Virgin Media Business<br>Jola Cloud Solutions |
| WaveConnect LAN               | A Local Wifi and Local Area Network service, managed by Wave 9 for functionality, availability and security                | Customer               | Wave 9                | Cisco Meraki   |
| WaveProtect Internet Security | A Universal Threat Management Service, managed by Wave 9 for underlying platform functionality, availability and security. | Customer               | Wave 9                | Sophos   |
| WaveProtect Backup            | A Backup and Recovery Service, managed by Wave 9 for underlying platform functionality, availability and security.         | Customer               | Wave 9                | Microsoft Azure  |
| WaveTalk                      | A broadband telephony service, managed by Wave 9 for underlying platform functionality, availability and security.         | Customer               | Wave 9                | Gamma<br>Jola Cloud Solutions  |