

METASWITCH DATA PROCESSING AGREEMENT FOR CUSTOMERS

1. General

- 1.1 This Data Processing Agreement is effective as of 25th May 2018 and sets out the terms and conditions between Metaswitch Networks Ltd (“Service Provider”) and Customer relating to the processing of personal data as part of the Services provided to Customer pursuant to the contract between the parties for such Services (the “Agreement”).
- 1.2 In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an addendum to the Data Processing Agreement.
- 1.3 This Data Processing Agreement may be updated by Service Provider from time to time by providing at least 30 days’ prior written notice to Customer (which may be by e-mail) or by publication of an updated Data Processing Agreement unless Customer states in writing that they will not accept such update within 20 days of such notice or publication being issue by Service Provider.

2. Definitions

- 2.1 In this Data Processing Agreement, the following terms shall have the meanings set out below:
- (a) **“Data Protection Legislation”** means Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the GDPR (when in force), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable, any guidance notes and codes of practice issued by the European Commission and applicable national Regulators including the UK Information Commissioner;
 - (b) **“GDPR”** means the EC Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (when in force);
 - (c) **“Regulator”** means any regulatory body with responsibility for ensuring compliance with Data Protection Legislation.
 - (d) **“Security Breach”** means accidental or deliberate, unauthorised or unlawful acquisition, destruction, loss, alteration, corruption, access, use or disclosure of personal data processed under to this Data Processing Agreement or breach of Service Provider’s security obligations under this Data Processing Agreement (including clause 3.3(c)).
 - (e) **“Services”** means the services described in Schedule 1.
- 2.2 References in clause to “data controller”, “data processor”, “processing”, “data protection officer” and “personal data” shall have the same meaning as defined in Data Protection Legislation.

3. Data Processing

- 3.1 The parties acknowledge and agree that in order to provide the Services, Service Provider may process personal data. Schedule 1 sets out the subject matter and duration of the

processing; nature and purpose of the processing; the type of personal data being processed; and the categories of data subject.

- 3.2 The parties agree that in respect of any personal data processed in connection with this Data Processing Agreement that Customer shall be the “**data controller**” and Service Provider or Sub Processor shall be the “**data processor**” .
- 3.3 Each party acknowledges and agrees that each party has respective rights and obligations under applicable Data Protection Legislation. Service Provider shall, without prejudice to its other rights or obligations, in respect of its processing of such personal data:
- (a) process the data only to the extent, and in such a manner, as is necessary for the purposes of this Data Processing Agreement and in accordance with Customer’s lawful written instructions from time to time. If Service Provider is unsure as to the parameters of the instructions issued by Customer and/or believes that Customer’s instructions may conflict with the requirements of Data Protection Legislation or other applicable laws, Service Provider may notify Customer for clarification and provide reasonable details in support of any assertion that Customer’s instructions may not be lawful;
 - (b) ensure the reliability of all its personnel who have access to the data and shall in particular ensure that any person authorised to process data in connection with this Data Processing Agreement is subject to a duty of confidentiality;
 - (c) having regard to the state of technological development and the cost of implementing any measures, take such technical and organisational measures against the unauthorised or unlawful processing of data and against the accidental loss or destruction of, or damage to data, to ensure a level of security appropriate to: a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and b) the nature of the data to be protected, provided that where such measures may require the use of resource and/or cost additional to that usually provided or incurred, or anticipated, by Service Provider, Customer agrees to pay for the same (in addition to any other charges or fees, provided that Service Provider has notified Customer of the fact that additional charges or cost may be payable;
 - (d) subject to agreement on costs assist Customer by using appropriate technical and organisational measures in responding to, and complying with, data subject requests;
 - (e) subject to agreement on costs provide Customer with reasonable co-operation and assistance in relation to Customer’s obligations and rights under Data Protection Legislation, taking into account the nature of the processing and the information available to the processor, including providing Customer and relevant Regulators (as applicable) with all information and assistance reasonably necessary to investigate security breaches and where relevant notify the relevant Regulator and/or affected data subject of the relevant security breach, carry out privacy impact assessments or otherwise to demonstrate compliance by the parties with Data Protection Legislation;
 - (f) subject to agreement on costs, without undue delay notify Customer, and provide such co-operation, assistance and information as Customer may reasonably require if Service Provider:
 - (i) receives any complaint, notice or communication which relates directly or indirectly to the processing of the personal data under this Data Processing Agreement or to either party’s compliance with Data Protection Legislation; and/or
 - (ii) becomes aware of any Security Breach;

- (g) keep at its normal place of business a written record of any processing of the data carried out in the course of the Services (“**Records**”);
- (h) permit no more than once per year Customer or a Regulator, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause by Service Provider, access to inspect, and take copies of, the Records for the purpose of auditing Service Provider's compliance with its obligations under this clause. Service Provider shall at Customer's cost give all reasonably necessary assistance to the conduct of such audit;
- (i) may engage a sub processor to process data (or otherwise sub-contract or outsource the processing of any data to a third party) (a “**Sub processor**”), provided that it:
 - (i) notifies Customer of any new or replacement Sub processors. If Customer objects to the appointment of a new or replacement Sub processor, it shall notify Service Provider within five business days. Customer shall be deemed to have accepted the Sub processor if Service Provider does not receive an objection with five Business Days. If the objection cannot be resolved by the parties within five Business Days of receipt by the Companies of the written objection, Service Provider shall not be in breach of this Data Processing Agreement or the obligations of any other agreement to Customer to the extent it cannot provide its services or otherwise comply with its obligations as a result;
 - (ii) enters into a written contract with the Sub processor that:
 - (1) provides protections or guarantees that Sub processor considers necessary to implement appropriate technical and organisation measures in compliance with the Data Protection Legislation; and
 - (2) terminates automatically on termination or expiry of this Data Processing Agreement for any reason; and
 - (iii) remains liable for all acts or omissions of the Sub processors as if they were acts or omissions of Service Provider (except to the extent caused or exacerbated by Customer).

As at the date of this Data Processing Agreement, Service Provider uses the sub-processors set out in Schedule 1 for the activities set out in Schedule 1 in connection with the provision of the Services;

- (j) at Customer's cost return or destroy (as directed in writing by Customer) all personal data it has in its possession and delete existing copies unless applicable law requires storage of the personal data.
- (k) Customer acknowledges and agrees that personal data may be transferred to those locations set out in Schedule 1 as well as any applicable order, quotation agreement or statement of work in accordance with any lawful transfer mechanisms . The parties agree that if the transfer mechanism used ceases to exist or is no longer considered to be a lawful method of transferring personal data outside of the European Economic Area (“EEA”), the parties shall have a good faith discussion and agree an alternative lawful transfer mechanism and Service Provider may cease or procure that the relevant third party ceases the processing of personal data until the parties have agreed an alternative transfer mechanism to enable the personal data to be transferred outside of the EEA in a compliant manner. Service Provider shall not be in breach of this Data Processing Agreement to the extent that the parties do promptly reach any such agreement.

- 3.4 Customer agrees to comply with its obligations under applicable Data Protection Legislation in respect of the processing of personal data under or in connection this Data Processing Agreement and shall in particular ensure that, as a condition of this Data Processing Agreement, Service Provider is lawfully permitted to process personal data on its behalf. Customer shall indemnify Service Provider on demand against all claims, liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs and all other professional costs and expenses) suffered or incurred by Service Provider arising out of Customer's breach of this clause 3.4 ("**Claims**"). Each party acknowledges that Claims include any claim or action brought by a data subject arising from the Service Provider's breach of its obligations in this clause.

Schedule 1

(A) Services: support and maintenance services purchased by Customer under the Agreement.

(B) Location of data processing, in each case where such processing is for customer subscriber data, including call record, IP addresses and network configuration, country of residence, product usage profiles, for Metaswitch products and third party products supported by Metaswitch, for the purpose of providing the Services pursuant to the Agreement:

Location
Northern Ireland, UK
England, UK
Scotland, UK
Malaysia
Norway
Other countries within the EEA on a temporary basis

(C) Permitted sub-processors and location of processing , in each case where such processing is for customer subscriber data, including call record, IP addresses and network configuration, country of residence, product usage profiles only in the performance of the Services and as described in the Agreement:

Name	Services	Location
Metaswitch Networks Corporation with an address at 2711 Centerville Road, Suite 400 Wilmington, Delaware 19808	Support and maintenance services for Metaswitch products.	United States
Metaswitch Networks PTY (Australia) with an address at Level 4 - 147 Collins Street, Melbourne, Victoria 3000	Support and maintenance services for Metaswitch products.	Australia
Open Cloud NZ Limited with an address at SOINet Limited, Level 12, Sun Microsystems House, 70 The Terrace, Wellington	Support, maintenance and software development services for Metaswitch products.	New Zealand
Réseaux Metaswitch Inc./Metaswitch Networks Inc. with an address at 1000 rue de la Gauchetière Ouest Suite 2900, Montreal Canada H3B 4W5	Support and maintenance services for Metaswitch products.	Canada
Metaswitch Networks Ltd. Mexico S.A. de C.V. with an address at Edificio Terret, Blvd. Miguel de Cervantes Saavedra 301, Torre Sur. Piso 14, Col. Granada, Mexico City 11520	Support and maintenance services for Metaswitch products.	Mexico

Open Cloud Spain S.L. with an address at Madrid, calle Pinar, No. 5	Support and maintenance services for Metaswitch products.	Spain
PT Open Cloud Indonesia with an address at Talavera Office Tower 28th floor, Jl. TB. Simatupang Kav.22-26, Jakarta 12430, Indonesia.	Support and maintenance services for Metaswitch products.	Indonesia
Telax Voice Solutions Inc. with an address at 365 Evans Ave. Suite #302, Toronto, ON M8Z1k2	Support, maintenance and development services for Telax products resold by Metaswitch.	Canada
Zoom Video Communications, Inc. with an address at 55 Almaden Blvd. 6 th Floor, San Jose CA 95113 USA	Support, maintenance and development services for Accession Meeting product.	United States
Netnumber, Inc. with an address at 650 Suffolk Street, Suite 307, Lowell, MA 01854	Support, maintenance and development services for NetNumber products resold by Metaswitch.	United States
JoHeR SARL with an address at 23 rue Balzac, 75008 Paris, France	Support, maintenance and development services for JoHeR products resold by Metaswitch.	France
Cordell Manufacturing, Inc. with an address at 918 Palomares Ave, La Verne, CA 91750	Support, maintenance and development services for Cordell products resold by Metaswitch.	United States
RadiSys Corporation with an address at 5435 NE Dawson Creek Drive, Hillsboro, Oregon 97124	Support, maintenance and development services for RadiSys products resold by Metaswitch.	United States
Nuance Communications International BVBA with an address at Guldenisporenpark 32 B-9820 Merelbeke, Belgium	Support, maintenance and development services for Nuance products resold by Metaswitch.	Belgium

(D) Service Provider Contact Details: privacy@metaswitch.com