

MASTER SERVICES AGREEMENT

BACKGROUND

- (A) Simwood eSMS Limited, registered in England and Wales No. 03379831 ("**Simwood**"), is authorised under the Act to run an Electronic Communications Network and to provide Electronic Communications Services in the United Kingdom.
- (B) The Company is authorised under the Act to run an Electronic Communications Network and/or to provide Electronic Communications Services in the United Kingdom.
- (C) The Company agrees that this Master Services Agreement shall be effective immediately that Simwood accepts any request for Services and the Company shall be bound by its terms.

DEFINITIONS

1 Interpretation

- 1.1 In this Agreement terms and expressions have the following meanings unless the context otherwise requires:

"Accept"	written confirmation by Simwood that they have received and accepted a request for Service submitted by the Company via the Website and Acceptance shall be construed accordingly;
"Act"	the Communications Act 2003;
"Agreement"	this document including any Order Form(s), as the same may be varied, amended, or extended, from time to time in accordance with its terms;
"Artificial Inflation of Traffic"	<p>any situation where Calls:</p> <ul style="list-style-type: none"> (a) are made, generated, stimulated, and/or prolonged for the direct or indirect benefit of any entity (including a natural person) operating, hosting, or otherwise connected with, an electronic communications service as a result of any activity by or on behalf of such entity; and (b) result in a calling pattern which is disproportionate to the overall amount, duration, and/or extent, of Calls which would be expected from:- <ul style="list-style-type: none"> (i) a good faith usage; or (ii) an acceptable and reasonable commercial practice relating to the operation of Electronic Communications Networks;
"Billing Period"	a calendar month, or such other period as is agreed in writing between the parties;
"BT"	British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ registered in England No. 1800000;
"Bursting"	the situation in which the number of concurrent Calls exceeds the number of contracted Channels;
"Bursting Charges"	charges for Bursting, as specified in the Simwood Bursting Charge document, as amended and published from time to time;



“Business Day”	any day (other than a Saturday or a Sunday) on which clearing banks are open in London for a full range of commercial banking transactions;
“Call”	a signal, message, or communication which can, in each case, be silent, visual (including text and data), or spoken but excluding an SMS;
“Channel”	the capacity to carry one concurrent Call either inbound or outbound. A Call may have an inbound and outbound part using two channels;
“Charges”	all monetary amounts which are due under this Agreement, including those resulting from applying the Rates and Simwood’s calculation methodology to the quantity of Services used, received, or ordered by the Company;
“CLI”	has the meaning given to Calling Line Identification in the CLI Guidelines;
“CLI Guidelines”	the “Guidelines for the provision of Calling Line Identification Facilities and other related services”, published by Ofcom, as may be amended or replaced from time to time;
“Commitment”	The minimum spend and minimum term (in each case, if any) as set out in the Order Form, or as otherwise agreed by the parties;
“Communications Provider”	as defined in the Act;
“Company”	the person identified to Simwood by name and/or registered number via an Order Form responsible for placing the request for Service;
“Confidential Information”	all information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers, and suppliers of each party (including, for the avoidance of any doubt, any information in relation to the Service), and which may be reasonably regarded as the confidential information of the disclosing party;
“Credit Balance”	a balance of an amount more than zero;
“Customer”	a third party to whom the Company provides a service using a Service provided under this Agreement, or any customer of that third party, and who is not an End User;
“Data Processing Agreement”	the data processing agreement available at https://simwood.com/docs/simwood_dpa.pdf , as amended by Simwood from time to time;
“Electronic Communications Network” or “ECN”	as defined in the Act;
“Electronic Communications Service” or “ECS”	as defined in the Act;
“Emergency Call”	a Call from an End User to an Emergency Service such as made by dialling 999 or 112 in the United Kingdom or 911 in the United States of America;
“Emergency Services”	in respect of any locality, the relevant public police, fire, ambulance, and coastguard services for that locality; and any other organisation providing a vital service relating to the safety of life in emergencies to which Simwood permits Emergency Calls to be made;
“End User”	a person who is the ultimate user of services which depend upon a Service provided



	under this Agreement;
“General Conditions”	Ofcom’s General Conditions of Entitlement published under Section 48(1) of the Act, as amended from time to time;
“Insolvency Event”	means any of the following which either has happened, or which Simwood, acting reasonably, believes has happened: (a) the Company is dissolved; (b) the Company ceases to conduct all (or substantially all) of its business; (c) the Company is or becomes unable to pay its debts as they fall due; (d) the Company is or becomes insolvent or is declared insolvent; (e) the Company convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; (f) an administrator, administrative receiver, liquidator, receiver, trustee, manager, or similar is appointed over any of the assets of the Company; (g) an order is made for the winding up of the Company, or the Company passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations and liabilities of the Company);
“Intellectual Property Rights”	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets), and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
“Help Centre”	Simwood’s wholesale customer handbook, as published at https://support.simwood.com and as amended from time to time;
“Minimum Spend”	The minimum spend for a Service, as set out in the relevant Order Form, or as otherwise agreed by the parties. If there is no minimum spend set out in the relevant Order Form or otherwise agreed, the minimum spend shall be £500 per month or the default minimum spend for the relevant Service, as published by Simwood from time to time (whichever is higher). The default minimum spend for a given Service, and the elements of spend which are counted towards the minimum spend, shall be specified in the Rates and may be varied from time to time by Simwood accordingly.
“Minimum Term”	The minimum term for a Service agreed to by the parties, as set out in an Order Form, or in clause 5.1, or as otherwise agreed by the parties;
“National Telephone Numbering Plan”	A document published by Ofcom from time to time under the section 56 of the Act;
“Network”	Simwood’s Electronic Communications Network or the Company’s and/or any other network operator’s Electronic Communications Network as the context requires, each run in accordance with the Act;
“Nuisance Call(s)”	an unwanted Call that causes annoyance to the receiver of the Call, and/or is a hoax Call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene, or menacing nature;



“Number Portability Policy”	Simwood’s policy on number portability, as updated by Simwood from time to time, currently available at https://simwood.com/docs/simwood_number_portability_policy.pdf ;
“Ofcom”	The Office of Communications, with head office at Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or any successor body;
“Order Form”	a document (whether physical or digital) agreed between the parties, or a page on the Portal, setting out details, and any additional terms and conditions, of the Service to be provided;
“Outbound Wholesale Call Conveyance Services”	a Service provided by Simwood to the Company, for the Company’s onward provision to its Subscribers or End Users, which comprises the routing and conveyance by Simwood of Calls originating from those Subscribers or End Users, to (or to a handover point in the path to) a destination requested by the relevant Subscriber or End User;
“Phone-paid Services Authority”	the organisation appointed as the Enforcement Authority for the purposes of Ofcom’s Premium Rate Services Condition, in accordance with s120 of the Act;
“Portability”	shall have the meaning given to it in the General Conditions of Entitlement published by Ofcom under Section 48 of the Act, as may be amended by Ofcom from time to time;
“Portal”	the account management and information portal made available online by Simwood from time to time, currently available at portal.simwood.com
“PSTN”	Public Switched Telephone Network;
“Rates”	Simwood’s applicable rates for the provision of the Simwood Service(s), as set out in the relevant Order Form, or as made available to the Company via the Portal and as amended from time to time in accordance with this Agreement;
“Revenue Share Service”	a service where an ECN or ECS provider pays to its customer operating such service an element of the conveyance charges which that provider receives for Calls to such service;
“Service”	Any service that utilises all or part of the Simwood Network (wherever or however that service originates) provided under this Agreement hereto and “Services” shall be construed accordingly
“Service Commencement Date”	The date on which Simwood starts to provide a Service to the Company; in respect of Outbound Wholesale Call Conveyance Services, the date on which Simwood begins to convey traffic according to clause 0;
“Subscriber”	has the meaning given to it in Ofcom’s General Conditions of Entitlement (as amended by Ofcom from time to time);
“Supply Chain”	The entire list of Communication Providers between the number range holder and End User inclusive, which provide a telephony service to that End User;
“Terminating Operator”	The third party to which Simwood routes a Call for termination or transit;
“Time Band”	The hours of the day during which a Rate is in effect;
“Unit of Capacity”	sufficient interconnect capacity to carry 300,000 minutes of switched traffic per month (i.e. a notional E1)
“Unpaid Charges”	the sum of: (a) Charges accrued but which have not yet been invoiced; and



- (b) Charges which have been invoiced but have not yet been paid; and
- (c) any VAT applicable to the Charges;

“Uplift”	the amount added on to the Charges (if any) for a Billing Period in order for the Company to achieve the Minimum Spend;
“VAT”	Value Added Tax;
“Website”	The website available at the domain www.simwood.com

- 1.2 References to clauses or schedules are references to clauses of or schedules to this Agreement and references to sections are to sections in the relevant Order Form.
- 1.3 References to persons will be construed so as to include any body corporate, unincorporated association, individual, firm, government, state or agency of the state, local or municipal authority or government body, or any joint venture, association, or partnership (whether or not having separate legal personality).
- 1.4 Words used in the singular only shall include the plural where appropriate and vice versa.
- 1.5 The headings to the clauses of this Agreement and to the sections of the Order Forms will not affect its construction.
- 1.6 References to the “parties” are to Simwood and the Company collectively and any reference to a “party” shall be a reference to one of them.
- 1.7 A reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, or re-enacted.
- 1.8 Any reference to a “day” (including within the phrase “Business Day”) shall mean a period of 24 hours running from midnight to immediately before the following midnight.
- 1.9 References to times are to London time unless otherwise specified.
- 1.10 A reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as a reference to any analogous term in that jurisdiction.
- 1.11 The Order Forms form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.
- 1.12 If and to the extent that there is an inconsistency between the terms of any Order Form and this Agreement, the terms of the Order Form shall prevail unless expressly stated otherwise.



2 Duration

2.1 This Agreement shall commence upon Acceptance by Simwood of a request for Service made by the Company and shall, unless terminated earlier in accordance with the terms of this Agreement, continue in force until all of the Services have been ceased in accordance with the relevant Order Form or the terms in this Agreement.

2.2 Subject to Clause 2.1 above, individual Services shall start on the Service Commencement Date and continue for their respective Minimum Term.

3 Provision of the Services

3.1 Simwood shall use its reasonable efforts to provide the Service to the Company.

3.2 Any equipment connected to Simwood's Network must:

3.2.1 be technically compatible with the Service;

3.2.2 not harm Simwood's Network or equipment, or any third party's Network or equipment; and

3.2.3 be connected and used in line with any relevant instructions, standards and laws.

3.3 Simwood authorises the Company to access Simwood's Network only for as long as the Company is a Communications Provider, and the Company acknowledges that any other access to Simwood's Network is unauthorised. Any connection between Simwood's Network and the Company's network shall be the responsibility of the Company and shall be provided at the Company's cost.

3.4 The Company undertakes that it will, in its contracts with its Customers, require such Customers to undertake that all apparatus which is attached (directly or indirectly) to Simwood's Network will conform to the relevant standard or approval for the time being designated under the Act and in the case of Customers who are resellers will require that they include and maintain such an undertaking in their contracts with further resellers and End Users.

3.5 The Company shall obtain all necessary permissions and consents from third parties necessary for:

3.5.1 the provision and use of the Services; and

3.5.2 the operation of the Company's Network which is to be connected to Simwood's Network pursuant to the provision of the Services,

and hereby warrants that all such permissions and consents as are necessary to enable the Company legally to receive the Services as envisaged by this Agreement have been obtained and will be maintained and kept up to date, and that it has the unimpaired right to receive the Services.

The Company shall not use Simwood's name, trade marks, service marks, or any other Intellectual Property Rights of Simwood without the prior written consent of Simwood. If Simwood does give such written consent the Company shall submit to Simwood for prior written approval copies of all marketing and advertising materials involving the Simwood name, trade marks, or service marks of Simwood, which the Company proposes to use in its marketing and advertising activities, prior to the use of such materials. Simwood may withdraw its consent, at any time, without reason, on notice to the Company. Any consent that is given by Simwood under this clause shall be deemed withdrawn upon termination of this Agreement.

3.6 The Company shall not at any time make any statements or representations to third parties with regard to Simwood or in any way hold itself out as acting on behalf of Simwood.

3.7 The Company, and not Simwood, is responsible for providing technical support to its Customers and End Users. The Company shall use all reasonable efforts to diagnose and resolve technical issues affecting it, its Customers, or its End Users. If, having done so, the issue remains unresolved



and the Company, acting reasonably, considers that the issue arises from or directly relates to the Services, the Company shall notify Simwood promptly and co-operate with the reasonable requests of Simwood in order to diagnose and remedy any issues.

- 3.8 The Company shall be responsible for all sales, marketing and customer service activities relating to its Customer base.
- 3.9 The Company shall, upon request, provide Simwood with full information and materials regarding any products or services offered to the Company's Customers or End Users through utilisation of the Service.
- 3.10 Simwood shall be entitled to:
 - 3.10.1 decline to route any Call if, acting reasonably, Simwood considers it appropriate to do so;
 - 3.10.2 change the technical specification of the Services (provided that such changes do not materially affect the performance of the Services) where necessary for operational reasons, statutory or regulatory requirements;
 - 3.10.3 give the Company instructions (which the Company shall comply with) which Simwood believes to be necessary for health and safety reasons, or for maintaining the quality of the Services;
 - 3.10.4 act in what it reasonably considers to be the best interests of Customers and End Users. This includes, in particular, contacting Customers and End Users, and engaging with regulatory authorities. The Company agrees not to frustrate Simwood's actions under this clause 3.10.4; and
 - 3.10.5 make alterations to any Service including (without limitation) conversions, shifts, reconfigurations, and renumbers. Such alterations may result in disruption to the Service although Simwood will use reasonable endeavours to minimise any disruption to the Company and, where practicable, Simwood will give the Company as much notice as possible.
- 3.11 Simwood warrants that:
 - 3.11.1 the Services will be performed in a good and workmanlike manner and in material accordance with the service descriptions contained in the Help Centre;
 - 3.11.2 it shall employ or engage in the provision of the Services persons who are appropriately qualified, skilled, and competent in the area into which they are employed; and
 - 3.11.3 it shall comply with its obligations under the General Conditions.
- 3.12 Simwood does not warrant that the Services will be fault free or free of interruptions. Simwood shall not be liable for any failure to provide the Services whether this arises from a technical or other failure of the System or otherwise.



- 3.13 Where Simwood is providing Outbound Wholesale Call Conveyance services, Simwood shall use best endeavours to convey Calls from the Company's network (wherever or however that service originates) over Simwood's network to the Terminating Operator's network. In the event that Simwood is unable to successfully route a Call, Simwood will send a signalling message back to the Company so that the Company may select an alternative route. The Company undertakes that it will have alternative routing options in place.
- 3.14 Where access to Emergency Services has been requested by the Company, and Simwood has enabled that access, Simwood shall use reasonable endeavours to convey Emergency Calls to the appropriate Emergency Services agency subject to the following conditions:
- 3.14.1 the Service shall only be available for access by persons using a telephone number conforming to: for the UK, the National Telephone Numbering Plan and originating from a calling party located in mainland UK (excluding Isle of Man and the Channel Islands); for the rest of the world: where Simwood has infrastructure allowing such calls to be made and advised it has agreements in place enabling such calls;
- 3.14.2 the Company shall provide, or ensure that Simwood has been provided with, all relevant Customer or End User information required to enable Simwood to provide access to Emergency Services;
- 3.14.3 the Company shall ensure that Customers and End Users can make an Emergency Call only to the Emergency Services applicable to the locality in which that Customer or End User is placing that Emergency Call; and
- 3.14.4 the Company shall, and shall ensure that its Customers shall, comply with all applicable laws in respect of the provision of Emergency Services access.
- 3.15 Simwood shall have no liability to the Company or to any Customer or End User for:
- 3.15.1 failure by the Company to comply with the terms of Clause 3.14; or
- 3.15.2 failure by a Customer or and End User to make a call to Emergency Services resulting from any matter outside Simwood's reasonable control. This includes, in particular, disruption to the Customer's or End User's power, terminal equipment, or connectivity.
- 4 Service levels
- 4.1 Any service levels described in the Order Form shall apply for the duration of the period set out in that Order Form.
- 5 Numbering and porting
- 5.1 All numbers made available to the Company by Simwood are subject to a minimum term of 12 months. The Company may make requests for Portability for a number, provided that such requests are in accordance with this Clause 5, at any time, including within that minimum term, but, in addition to any Charges levied under Simwood's Number Portability Policy or this Agreement, the Company shall pay Simwood an early termination fee in respect of those numbers, being an amount equal to the mean average monthly charge incurred by the Company in the three months prior to the month in which the Service is terminated, multiplied by the number of months remaining of that number's minimum term.
- 5.2 Subject to clause 5.4, Simwood shall provide Portability services to the Company in accordance with the Number Portability Policy, as published and amended by Simwood from time to time.



- 5.3 The Company shall not request, and Simwood shall not be required to provide, the export of numbers from the Company's account, where the Company cannot demonstrate to Simwood's reasonable satisfaction that:
- 5.3.1 those numbers are currently being used by a Subscriber (and, in accordance with clause 7.1.4, the Company shall be deemed never to be a Subscriber);
 - 5.3.2 that Subscriber has requested that export;
 - 5.3.3 that export was requested by that Subscriber for the purpose of moving their telephony services to a new provider; and
 - 5.3.4 the Company does not remain in the Supply Chain.
- 5.4 If Simwood, acting reasonably, considers that the Company has repeatedly breached Clause 5.3, Simwood may notify the Company to this effect and, on and from the date of that notice until such time as Simwood considers appropriate, Simwood shall apply an increased fee for each subsequent request for Portability by the Company. This fee shall be in addition to any other remedies available to Simwood under this Agreement, and shall apply irrespective of whether Simwood actions the request for Portability or not.
- 5.5 Clauses 5.3 and 5.4 shall survive the termination of this contract.

6 Provision of Information

- 6.1 The Company and Simwood agree promptly to supply the other upon request with all information and assistance which may reasonably be required to enable the other to perform their respective obligations hereunder or which is necessary to satisfy a demand from a judicial body, regulator, or law enforcement agency.
- 6.2 The Company shall provide Simwood, promptly on request by Simwood, with such information about Customers and End Users and their apparatus as necessary for Simwood to comply with regulatory or legal requirements or good industry practice.
- 6.3 The Company shall be solely responsible for obtaining from Customers and End Users any information, access to premises for Simwood and its subcontractors and/or other cooperation needed by Simwood in connection with the provision of the Services.
- 6.4 Simwood's Data Processing Agreement is hereby incorporated into this Agreement.
- 6.5 The Company shall be responsible for ensuring that all Customer and End User records are up to date and accurate.

7 Use of Services

- 7.1 The Company represents and warrants that:
- 7.1.1 it is, and will remain for the duration of this Agreement, a Communications Provider;
 - 7.1.2 it is responsible for its continued competence and ability to be a Communications Provider and comply with the General Conditions;
 - 7.1.3 it receives the Services from Simwood solely as a Communications Provider; and
 - 7.1.4 it shall not use the Services in such a way that it is or becomes a Subscriber or End User of Simwood.



- 7.2 The Company will use the Services in accordance with the provisions of this Agreement and Simwood's relevant service literature (as provided to the Company by Simwood from time to time) including all security features provided by Simwood to protect the Services, and all other reasonable instructions as may be notified by Simwood to the Company from time to time and in accordance with the relevant provisions of the Act.
- 7.3 The Company undertakes to comply with the General Conditions.
- 7.4 The Company must take all reasonable steps to procure that the Service is not used:
- 7.4.1 in a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence applicable to the Company, Customer or End User (as appropriate) or that is in any way unlawful, or fraudulent, or, to the knowledge of the Company, Customer, or End User, has any unlawful or fraudulent purpose or effect; or
 - 7.4.2 in any way which infringes the Intellectual Property Rights of Simwood or any third party; or
 - 7.4.3 in connection with (without prejudice to the generality of clause 7.4.1) the carrying out of fraud, or criminal offence, against any other public telecommunications operator; or
 - 7.4.4 in any way that constitutes, accessorises, or enables, Artificial Inflation of Traffic; or
 - 7.4.5 in any way that in Simwood's reasonable opinion could materially affect the quality of any telecommunications service or other service provided by Simwood or any third party; or
 - 7.4.6 to make Nuisance Calls or to send "spam"; or
 - 7.4.7 to threaten, harass, stalk, abuse, disrupt, or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others; or
 - 7.4.8 to obtain access, through whatever means, to restricted areas of the underlying Network; or
 - 7.4.9 to send and receive data in such a way or in such amount so as to adversely affect Simwood's Network (or any part of it) or to adversely affect other customers of Simwood or of its suppliers; or
 - 7.4.10 contrary to any instructions given under Clause 3.10.3 above; or
 - 7.4.11 in a way which (in the reasonable opinion of Simwood) brings the name of Simwood into disrepute, or which places Simwood in breach of the Act or other permission or consent held by Simwood.
- 7.5 The Company shall
- 7.5.1 include and maintain in its contracts with Customers conditions equivalent to those contained in Clause 7.4, and, in the case of Customers who are resellers, require that they include and maintain such conditions in their contracts with further resellers and End Users; and
 - 7.5.2 diligently and properly enforce such conditions (including if appropriate by suspending or terminating the provision of its service to the Customer or End User) where the Company knows or reasonably suspects that a Customer or End User is in breach of such obligations.
- 7.6 The Company shall comply with the processes, procedures and requirements set out in the Help Centre.
- 7.7 Each party shall comply with the CLI Guidelines.
- 7.8 The Company shall, at all times, comply with Simwood's Acceptable Use Policy as published and amended by Simwood from time to time at on the Website at <https://simwood.com/aup>.
- 7.9 Simwood may, in its absolute discretion, permit Bursting by the Company. If it does permit Bursting, Simwood may charge the Company Bursting Charges. If Simwood does permit Bursting, it may cease to permit Bursting at any time, without reason, and without notice to the Company.
- 7.10 If Simwood is notified that any traffic from the Company (including any traffic from the



Company's Customers or End Users) represents the Artificial Inflation of Traffic, Simwood may, in its absolute discretion, dispute that notification. If Simwood chooses to dispute that notification:

- 7.10.1 the Company shall still pay Simwood all Charges relating to that traffic;
 - 7.10.2 Simwood may charge the Company as detailed in Simwood's Rates for the time which Simwood spends in dealing with or disputing that notification, or any matter relating to it;
 - 7.10.3 the Company shall provide to Simwood, promptly following Simwood's request, all such information as Simwood may request, to assist Simwood in disputing that notification; and
 - 7.10.4 Simwood shall have no liability whatsoever for the outcome of any dispute.
- 7.11 If, in Simwood's reasonable opinion, any traffic from the Company (including any traffic from the Company's Customers or End Users) represents the Artificial Inflation of Traffic, Simwood may either or both raise a dispute in respect of that traffic, and notify other relevant communications providers. The Company shall still pay Simwood all Charges relating to that traffic.

8 Charges and Payment

- 8.1 The Company agrees to pay all Charges.
- 8.2 The Company shall pay all Charges in pounds sterling, unless otherwise agreed between the parties.
- 8.3 All Charges are quoted exclusive of VAT or any other applicable taxes which may from time to time be levied and such VAT and any other such applicable taxes shall be itemised separately on all invoices and bills and payable by the Company in addition to, and at the same time as, any Charges.
- 8.4 All Charges shall be calculated by reference to data recorded or logged by Simwood and not to data recorded or logged by the Company.
- 8.5 The Company shall be liable for Charges in respect of:
 - 8.5.1 all Calls which appear to Simwood to emanate from, or be destined for, the Network, whether or not the Call was authorised by the End User; and
 - 8.5.2 any transaction which is authenticated according to the Company's IP address, user name and password, or other means of identification.
- 8.6 The Company shall be responsible for the security of its passwords and for notifying Simwood of any changes to its IP addresses or other methods of authentication and authorisation.



- 8.7 Simwood shall have the right to amend the Rates from time to time, and any amendments shall be effective on and from the date set out on those amended Rates, or if no such date is set out, immediately on and from the time Simwood posts the amended Rates to the Portal or the Website.
- 8.8 Any fraud, Artificial Inflation of Traffic, or other improper, or unauthorised, use of the Services committed by the Company, its Customer or End User, or by any third party, shall not relieve the Company of its payment obligations to Simwood under this Agreement.
- 8.9 In the case of Services for which prepayment is required:
- 8.9.1 all Charges and sums due to Simwood shall be deducted from the Company's prepayment account, notwithstanding that the Company may not have received payment from its Customers or End Users or any other third party;
- 8.9.2 where VAT is applicable, the invoice will be in respect of the gross payment received and that amount net of the VAT charged will be credited to the prepayment account. Zero rating of VAT is at Simwood's discretion subject to satisfactory evidence of VAT registration being provided by the Company. No back-dating of zero rate VAT is available; and
- 8.9.3 the Company must maintain a Credit Balance in its prepayment account at all times. Simwood will specify the minimum level of individual payment which it will accept, in British Pounds, US dollars, Euros, or any other currency Simwood has expressly stated it will accept, on the relevant Order Form. It is the sole responsibility of the Company to ensure sufficient credit remains on the account for traffic. Credit will only be added to the Company's account upon confirmation of cleared funds being received in Simwood's bank account. Any funds received other than between 9AM and 5PM on a Business Day will be added to the Company's account on the next following Business Day. Simwood may suspend any Service to which pre-payment applies with immediate effect in the event that the Company fails to maintain a Credit Balance.
- 8.10 For Outbound Wholesale Call Conveyance Services, the Company agrees to pay the Charges as set out in the Rates, as published and amended by Simwood from time to time.
- 8.11 Simwood shall provide web-site access to a summary showing:
- 8.11.1 destination or origination of Calls; and
- 8.11.2 for each destination/origination, by Time Band:
- (i) total number of minutes for each specified Rate;
 - (ii) a copy of the CDR; and
 - (iii) sub-total of Charges.
- 8.12 Simwood shall maintain and retain for a period of one year details of all Charges.



8.13 The Charge for conveyance of a Call is calculated by the following formula: $D = [A \times (B/60)] + C$

Where:

A = the Call duration in seconds rounded up to the nearest second, or next billing increment if specified.

B = the appropriate pence (or other currency if specified) per minute Rate.

C = the connection charge as set out in the Rates.

D = the Charge rounded up to the next tenth of a penny (or other currency unit if specified).

Where a Call commences in one Time Band and concludes during another, the applicable Charges shall be determined using the appropriate pence per minute Rate (or other currency unit if specified), applied at the start of the Call.

Where a minimum call duration is specified, the call charge will be based on the greater of these and A. Where a minimum call charge is specified, the call charge will be based on the greater of this and D.

The cost of a Call depends on time of day the call starts, destination, and duration as well as, on occasion, the origin of a call e.g. from a pay-phone or a mobile. The timed duration of a Call begins on the receipt of an answer signature from the Terminating Operator and ends on receipt by Simwood of a "call clear" message from either the Company's equipment or the Terminating Operator's equipment. It is the responsibility of the Company to ensure that this signal is received by Simwood.

Charges for conveyance of a Call will only be incurred in respect of Calls successfully routed by Simwood.

8.14 Simwood shall not be held responsible for any situation in which a Call is generated in error, and/or is unauthorised for whatever reason, and the Company shall remain liable for the relevant Charges associated with that Call.

8.15 Simwood may in a separate invoice (containing the information referred to in these billing procedures) make backdated claims for amounts owed from a previous Billing Period which were not previously invoiced for technical or other reasons. Any backdated invoices must be submitted within twelve months of the date that the Services were rendered.

8.16 Simwood expressly reserves the right to offset any unpaid sums owing to it under this Agreement against any sums payable to the Company under this Agreement. If Simwood exercises its right of set off it shall notify the Company in writing that it is doing so, providing appropriate details.

8.17 Except where stated otherwise by Simwood, the Company shall maintain a Credit Balance as agreed with Simwood, and all Charges (other than those relating to the maintenance of that Credit Balance) incurred by the Company shall be deducted from that Credit Balance. Where an exception to this is made and subject to clause 8.15, Simwood shall invoice the Company monthly in arrears for all Charges and any other sums due under this Agreement. Payment terms may vary and will be as specified in each invoice. Payment shall be by any method specified in the Help Centre. Time shall be of the essence in respect of such payments and payment shall be deemed to have been made at the time when cleared funds are available in Simwood's bank account.

8.18 Charges shall accrue from the time any part of a Service is used or received.

8.19 Simwood will allow the Company to accumulate unpaid Charges up to a maximum of the Company's credit limit, as advised by Simwood from time to time. In the event that at any time unpaid Charges exceed that credit limit, Simwood shall be entitled, at its option, to issue an interim invoice or to request an immediate payment on account by the Company. Any interim invoice issued under this clause shall be payable by the Company within seven (7) days of issue.



Simwood reserves the right to require a deposit or guarantee or such other security as may be acceptable to Simwood prior to the provision of any Service or in the event that at any subsequent date there is in the opinion of Simwood a significant change in the circumstance of the Company. Details of such security will be notified separately by Simwood.

- 8.20 Simwood shall be entitled to withhold any sums payable to the Company and any rebate otherwise due to the Company in connection with a Service if:
- 8.20.1 in Simwood's reasonable opinion fraud or Artificial Inflation of Traffic has taken place; or
 - 8.20.2 the corresponding repayment or rebate from BT or any other originating operator or any other transit operator to Simwood has been withheld or delayed for any reason; or
 - 8.20.3 BT or any other originating operator or any other transit operator seeks to or threatens to withhold from Simwood payment of revenue or other payments deriving from or attributable to the same Service.
- By way of example, such retention may be exercised by Simwood in circumstances in which BT is seeking to exercise rights under annexe `E` of the BT Standard Interconnect Agreement.
- 8.21 In the event that a claim is made against Simwood by BT or any other originating operator or any other transit operator, under an interconnection agreement or otherwise for recovery of sums previously paid, and in respect of which revenue share has already been paid or a rebate given to the Company, Simwood shall be entitled to recover the revenue payments and rebates made by it to the Company which derived from the same Revenue Share Service as gave rise to the revenue which BT or the other network provider is reclaiming from Simwood.
- 8.22 Simwood will consult with the Company with regard to the management of any retention right exercised against Simwood or claim made against Simwood made under this clause and will in good faith negotiate with a view to the Company taking over direct discussions with the claimant or that ultimate party, when traced through the interconnection chain, which has caused the claim to be made, but until terms have been agreed as to the transfer of management of the claim to the Company and the direct acceptance of liability as between the ultimate claimant and the Company, with all other intermediate parties being released, the obligation of Simwood is only to consult with the Company in relation to the management of the claim.
- 8.23 The Company also agrees to be bound by, and to give effect to, any decision resolving issues or disputes about revenue payment obligations which takes place under the terms of any dispute resolution process imposed in any interconnection agreements which are binding as between two parties in the interconnection chain notwithstanding that neither Simwood nor the Company is a party to any such agreement. Simwood will however use reasonable endeavours to enable the views of the Company to be represented in any such dispute resolution process.



- 8.24 The Company must read any invoices issued to it promptly, and notify Simwood in writing of any error within 5 Business Days of the invoice date. This notification must identify the disputed charges, and explain why they are in dispute, and be accompanied by any relevant supporting documentation. The Company must pay any undisputed part of the invoice in accordance with this Agreement.
- 8.25 If, on expiry of the period set out in clause 8.24, Simwood has not received any such notification, the Company agrees that it will not bring any dispute or claim relating to that invoice.
- 8.26 Promptly following Simwood's receipt of a notification of dispute, Simwood and the Company shall use reasonable efforts, and shall each act reasonably and in good faith, to resolve the dispute. Simwood reserves the right to deduct any disputed charge from the Company's prepayment balance until the dispute has been resolved. If the parties are unable to resolve a dispute raised under Clause 8.24, within seven (7) Business Days, the dispute shall be referred to the Managing Director of Simwood and the Managing Director of the Company who shall attempt in good faith to resolve it. If the Managing Director of Simwood and the Managing Director of the Company are unable to resolve the dispute within 30 days of it being referred to them, either party may take such further steps as it considers appropriate to resolve the dispute, including the initiation of court proceedings.
- 8.27 Prior to recommencement of the Services by Simwood following suspension or termination in accordance with this Agreement, Simwood may require the Company to provide Simwood with a security deposit in a sum to be determined by Simwood (the "Deposit") and notified to the Company. Simwood shall be entitled to apply all or any amount of the Deposit against any outstanding Simwood invoices in the event the Company fails to pay such invoice in accordance with the provisions of this clause 8.
- 8.28 In the event of non-payment of any invoice or part thereof which is not the subject of a bona fide dispute under Clause 8.24, Simwood reserves the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to eight percent above the Bank of England's official dealing rate (or such higher percentage as ordered by the Secretary of State in accordance with s6 of the Late Payment of Commercial Debts (Interest) Act 1998) whether before or after judgment until the date actual payment is received together with all costs reasonably incurred by Simwood in securing such payment and/or obtaining such judgment, as the case may be. Simwood may, instead, deduct all or part of any such outstanding sum from the Company's Credit Balance.
- 8.29 Any sums remaining in pre-paid accounts after termination of this Agreement shall remain the property of Simwood and shall not be refundable by Simwood to the Company. In the event that Simwood decides, in its absolute discretion, to refund all or part of any pre-payment made by the Company following termination of this Agreement, Simwood shall have the right to levy an administration charge amounting to the greater of £50 or five percent (5%) of the unused credit.
- 8.30 No interest shall accrue or be due on any pre-payments received from the Company.



8.31 If, for any period of six consecutive months, the Company incurs or has incurred no Charges (excluding any pre-payments, any Uplift, and any Charges relating to Portability or incurred in connection with Clauses 5.3 or 5.4), the Company shall forfeit the Credit Balance on the Company's account on that date, and this shall become the property of Simwood. In the event that Simwood decides, in its absolute discretion, to return all or part of that forfeited Credit Balance to the Company following the Company's request, Simwood shall have the right to levy an administration charge amounting to the greater of £50 or five percent (5%) of that forfeited Credit Balance.

8.32 For the purpose of clause 8.31, the date of a Charge shall be:

8.32.1 in the case of a Charge relating to the maintenance of the Company's Credit Balance, the date on which the payment for that Charge was applied to the Company's account; and

8.32.2 in the case of a Charge billed to the Company by way of an invoice, the date of the invoice on which that Charge appears.

9 Suspension of Services

9.1 Simwood may (without prejudice to its other rights) suspend the provision of the Services in whole or in part, with immediate effect if:

9.1.1 Simwood is obliged to comply with a legal obligation, or an order, instruction, or request, of a government department or body, an emergency services organisation, or other competent administrative or regulatory authority, including Ofcom or the Phone-paid Services Authority;

9.1.2 in Simwood's reasonable opinion suspending the Services is necessary;

9.1.3 the Company is in material breach of this Agreement (including failure to pay any sum due) and shall have failed to remedy such breach within 2 Business Days of receipt of a notice specifying the breach and requiring it to be remedied;

9.1.4 the Company commits a material breach of this Agreement which cannot be remedied;

9.1.5 the Company is repeatedly in breach of this Agreement (whether each individual breach is material or not);

9.1.6 the Company's prepayment balance reaches zero, or in Simwood's reasonable opinion is imminently likely to do so;

9.1.7 Simwood has reason to believe a Service is being used in a manner which breaches or may breach the provisions of clauses 7.1-7.5;

9.1.8 there is a material and immediate threat to Simwood's network integrity or the integrity of the PSTN; or

9.1.9 the Company's entitlement to provide Electronic Communications Networks or Electronic Communications Services is terminated, suspended, or restricted.

9.2 Simwood may (without prejudice to its other rights) suspend the provision of the Services in whole or in part, with immediate effect if:

9.2.1 Simwood is entitled to terminate this Agreement pursuant to clause 10.1; or

9.2.2 for operational reasons or in case of emergency.

9.3 If Simwood exercises its right to suspend service or part thereof pursuant to this Clause 9, it shall whenever reasonably practicable give prior notice of such suspension and its expected duration and Simwood will not be liable for any loss, damage, or inconvenience suffered by the Company.

9.4 Simwood may temporarily suspend the Service if it needs to carry out work relating to the upgrading, maintenance or backing-up of its Network (provided that Simwood has given the Company the maximum period of notice reasonably practicable in the circumstances).

10 Termination



- 10.1 Without prejudice to any other rights or remedies of Simwood, Simwood may terminate this Agreement with immediate effect by written notice:
- 10.1.1 upon the expiration of thirty (30) days' written notice following suspension in accordance with Clause 9.1 above;
 - 10.1.2 in the event of an Insolvency Event;
 - 10.1.3 the Company materially, or repeatedly, breaches any of its obligations or warranties under this Agreement;
 - 10.1.4 if, in Simwood's reasonable opinion, any traffic from the Company (including any traffic from the Company's Customers or End Users) represents the Artificial Inflation of Traffic; or
 - 10.1.5 if a party ceases to be (or never was) authorised to provide an ECN or ECS under the Act.
- 10.2 Either party shall be entitled to terminate this Agreement by giving to the other not less than ninety (90) days' notice of termination, such notice expiring no sooner than the end of the Minimum Term in an Order Form (or, where there are multiple Order Forms with Minimum Terms, the end of the Minimum Term which is the last to expire).
- 10.3 Following termination of this Agreement pursuant to Clauses 10.1, 10.2, or 15.1, and without prejudice to any rights or remedies available to Simwood, the Company shall pay to Simwood on demand all arrears of Charges due up to the date of termination under this Agreement or as a result of termination of this Agreement. This clause shall continue to be binding on the Company notwithstanding termination of this Agreement.
- 10.4 Simwood shall charge in accordance with the provisions of Clause 8 for any Calls carried from the date of the last invoice until the date of termination of this Agreement.
- 10.5 Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination, and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination. This shall include, in particular, Clauses 1, 3.6, 3.15, 5.3 - 5.4, 8.20, 8.29, 8.30, 9.3, 10.3 - 10.5, 11, 12.1.2, 13, 14, and 17.
- 11 Indemnities
- 11.1 The Company will indemnify, defend and hold harmless Simwood from and against any liabilities, actions, losses, damages, judgments, costs, claims or expenses incurred by Simwood, or legal proceedings which are brought or threatened against Simwood by a third party (including, without limitation, a Customer or an End User), as a result of:
- 11.1.1 a Service being or having been used in breach of Clause 7.4 except where such breach results from fraud on the part of Simwood; or
 - 11.1.2 the Company being or having been in breach of any of its obligations or warranties under this Agreement; or
 - 11.1.3 any fraud or Artificial Inflation of Traffic; or
 - 11.1.4 a call to a Revenue Share Service or as a result of any act or thing which happens in consequence of a call to a Revenue Share Service.
- 11.2 As a condition of the indemnity in clause 11.1, Simwood must:
- 11.2.1 notify the Company promptly in writing of any such claims or legal proceedings upon becoming aware of the same; and
 - 11.2.2 make no admission relating to such claims or legal proceedings without the agreement of the Company, which shall not be unreasonably withheld or delayed; and
 - 11.2.3 actively consult with the Company regarding the conduct of any action and have due regard to the Company's representations, and not agree any settlement of such claims or legal proceedings, nor make any payment on account of them, without the agreement of the Company, which shall not be unreasonably withheld.



12 Warranties

12.1 Each party warrants to the other party (such warranties being deemed to be repeated on each and every day during the term of this Agreement) that:

12.1.1 it has the unimpaired right and authority to enter into and perform this Agreement which shall constitute a binding obligation on it;

12.1.2 it will comply with its respective obligations under Simwood's Data Processing Agreement; and

12.1.3 it will at all times comply with its obligations (if any) under the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any subsequent revision, extension or replacement thereof.

12.2 Simwood cannot and does not guarantee a fault free service. Simwood gives no warranty that its network or Services shall be continuous, or will be free from faults. Simwood will, however, take steps to ensure its network and Services are reasonably fault free, and that service is reasonably uninterrupted.

12.3 Simwood gives no warranty or guarantee that the Service is satisfactory or suitable for the Company's purposes and the Company acknowledges that the Service was not designed with the Company in mind.

13 Liability

13.1 Except where otherwise expressly stipulated in this Agreement the following provisions set out the entire liability of Simwood (including liability for the acts and omissions of its employees, agents, consultants, and subcontractors) to the Company in respect of:

13.1.1 any delay or default in the provision of the Services;

13.1.2 any use made by the Company of the Services;

13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Services.

13.2 Nothing in this Agreement shall exclude or restrict Simwood's liability for death or personal injury resulting from the negligence of Simwood or its employees while acting in the course of their employment or for damages incurred by the Company as a result of fraud on the part of Simwood.



- 13.3 Subject to clauses 3.12, 13.2 and 13.4, Simwood shall be liable for damage to the physical property of the Company or the property of any of its Customers caused by any negligent act or omission of Simwood or its employees PROVIDED THAT such liability of Simwood shall be limited to twenty percent (20%) of the Charges (exclusive of VAT) invoiced and collected by Simwood from the Company in the 12 month period prior to the relevant incident or incidents (or in the period from the date of this Agreement to the date of the relevant incident or incidents, if shorter than 12 months).
- 13.4 Simwood shall not be liable to the Company (or any Customer) in contract, tort, negligence or otherwise arising, for:
- 13.4.1 any loss of revenue, business, time, opportunity, data, anticipated savings or profits;
- 13.4.2 any indirect or consequential loss howsoever arising; and
- 13.4.3 any loss relating to or arising from any traffic from the Company (including any traffic from the Company's Customers or End Users) which, in Simwood's reasonable opinion, represents the Artificial Inflation of Traffic.
- 13.5 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage, or otherwise, are hereby wholly excluded.
- 13.6 Subject to the express terms of this Agreement, Simwood shall not be liable to the Company for any claims, proceedings or actions brought or made against the Company by persons pursuant to a contractual relationship with the Company. The provisions of this Clause 13.6 shall apply notwithstanding that such claims, proceedings or actions arise through the act or omission of Simwood.
- 13.7 Subject to Clauses 13.1-13.6, the maximum total, aggregate, liability of Simwood in contract, tort, negligence, or otherwise arising out of, or in connection with, this Agreement, shall be limited to the sums invoiced and collected by Simwood from the Company in respect of Charges (exclusive of VAT) in the 12 months before the first cause of action arose (or in the period from the date of this Agreement to the date on which the first cause of action arose, if shorter than 12 months), but not including any Charges which incorporate or relate to a payment for anything other than the origination, transmission, or termination, of a communication carried by the Simwood Network. This means that, in particular, Charges incorporating or relating to any payments for the following are excluded:
- 13.7.1 content, data services, or value-added services (such as premium rate services);
- 13.7.2 number portability;
- 13.7.3 liquidated damages; and
- 13.7.4 any breach of this Agreement by the Company.
- 13.8 The Parties agree that the allocation of risk in this clause 13 is fair and reasonable having regard to all the circumstances.
- 13.9 The provisions of this Clause 13 shall continue to apply notwithstanding termination of this Agreement.



- 14 Notices
 - 14.1 The Company shall notify Simwood of the email address to which Simwood should send notices under this Agreement. The Company shall notify Simwood if it wishes to change that email address, and the change will take effect from the date on which Simwood confirms that it has made the change.
 - 14.2 Any notice (except for the service of court proceedings) shall be sent to the other party's nominated email address for service.
 - 14.2.1 In the case of Simwood, this is team@simwood.com.
 - 14.2.2 In the case of the Company, this is the email address notified to Simwood under clause 14.1, or such other email address as used by or on behalf of the Company to correspond with Simwood, or else an email address which Simwood reasonably believe is linked with the Company.
 - 14.3 The Parties consider that notice has been given:
 - 14.3.1 in the case of Simwood notifying the Company, at the time at which Simwood sent the email; and
 - 14.3.2 in the case of the Company notifying Simwood, 24 hours after the Company receives confirmation from Simwood that it has received such notification.
 - 14.4 Notice for the service of court proceedings shall be by a signed-for postal service which provides proof of delivery, or by courier, and such notice shall be addressed:
 - 14.4.1 to Simwood, addressed to the Managing Director, and sent to Simwood's registered office address; and
 - 14.4.2 to the Company, to the most recent address which Simwood has on file for the Company or, where no such address exists, to an address which Simwood reasonably believe is linked with the Company. Simwood may also serve the Company by email, if it is not reasonably able to serve notice to the Company by post or courier.
- 15 Force Majeure
 - 15.1 Other than in respect of the Company's obligations to pay the Charges, neither party shall be liable to the other for any breach of this Agreement or failure or delay to perform any obligation where such breach or failure or delay was the result of any act of God, insurrection or civil disorder, war or military operations, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government or regulatory authority, compliance with any statutory obligation, industrial disputes of any kind, the acts or omissions of network operators, or any other cause beyond that party's reasonable control. In the event of such breach, failure, or delay, the time for performance shall (except in relation to payment obligation in connection with the Charges) be extended by a period equivalent to that during which performance is so prevented provided that if such failure or delay persists for thirty (30) days or more, Simwood may, at its option terminate this Agreement by giving fourteen (14) days written notice of such termination to the Company.



16 Variation

16.1 The Company may request, and Simwood may, in its discretion, agree to provide, an increase or uplift in any Services at any time, at a price and in accordance with the provisions of any Order Form relating to those Services or else as otherwise agreed between the parties.

16.2 In addition to the specific rights to vary this Agreement contained elsewhere in this Agreement, Simwood may vary any provision in this Agreement from time to time. Simwood shall provide the Company with 30 days' notice of any such variation.

16.3 If the Company, acting reasonably, considers that the variation has or is likely to have a material adverse impact on the Company and the Company wishes to object to the variation, the Company must notify Simwood within 5 Business Days of the date of Simwood's notice of variation. This notification must explain the material adverse impact of the variation, and be accompanied by all relevant supporting documentation.

16.4 Promptly following Simwood's receipt of a notification of objection, Simwood shall review the Company's objection, and:

16.4.1 If Simwood, acting reasonably, agrees that the variation has or is likely to have a material adverse impact, either:

- Simwood shall notify the Company that the Agreement shall continue without that variation taking effect; or
- Simwood may, in its sole discretion, terminate the Agreement on notice to the Company.

16.4.2 If Simwood, acting reasonably, disagrees that the variation has or is likely to have a material adverse impact, Simwood shall notify the Company, and the variation shall have effect on the date specified in the notice given by Simwood under Clause 16.2.

16.5 Other than as set out in this Agreement, this Agreement shall not be varied other than in writing, signed by the duly authorised representatives of Simwood and the Company.

17 General

17.1 This Agreement represents the entire understanding between the parties and supersedes any and all other written recorded and oral communications between them.

17.2 Both parties acknowledge that:

17.2.1 neither of them has been induced to enter into this Agreement by any representation, warranty, or other assurance not expressly incorporated into it; and

17.2.2 in connection with this Agreement, and except in the case of fraud, the only rights and remedies available in relation to any representation, warranty, or other assurance, are for breach of contract, and that all other rights and remedies are excluded.

17.3 The Company shall not assign or otherwise deal with all or any of its rights and obligations under this Agreement without Simwood's prior written consent.

17.4 The Company and Simwood each agree not to use or refer to the name of the other party in any article, announcement or published literature without the express prior written consent of the other party.



- 17.5 Nothing in this Agreement shall create a partnership or joint venture between the parties or constitute any party being the partner, agent or legal representative of the other.
- 17.6 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 17.7 Any Intellectual Property Rights shall remain the property of the party creating or acquiring the same and nothing in this Agreement shall be deemed to confer any assignment or licence of any Intellectual Property Rights whatsoever of one party to the other.
- 17.8 Each party undertakes to the other that it shall keep and shall procure that its directors, officers, employees, servants, agents, and subcontractors (as appropriate) shall keep Confidential Information secret and confidential and shall only use Confidential Information in accordance with performing this Agreement and in particular not use, copy, adapt, alter, or part with possession of, or disclose to any other third party, any Confidential Information PROVIDED THAT:
- 17.8.1 nothing herein shall prevent the use or disclosure of any Confidential Information not treated by the other party as confidential or which does not properly belong to it; and
- 17.8.2 the party receiving such Confidential Information shall not be prevented from using or disclosing the same to the extent that it is in or comes into the public domain otherwise than through the default or negligence of the receiving party, or to the extent that its disclosure is required by law.
- 17.9 The parties agree that damages alone would not be an adequate remedy for the breach of any of the provisions of Clause 17.8 and accordingly that, without prejudice to any other rights and remedies available, either party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of Clause 17.8.
- 17.10 In the event that any provision of this Agreement is held to be void, illegal, or unenforceable, the relevant provision shall be deemed not to be, or never to have been or formed, a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
- 17.11 A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 17.12 This Agreement shall be governed, construed, and take effect in all respects in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this Agreement save that the Company shall not object to Simwood seeking enforcement of any resultant judgment in any court in any territory having jurisdiction over the Company or its assets.
- 17.13 For the avoidance of doubt, it is hereby agreed and declared that Simwood shall at all times be free to enter into contracts relating to the Services with such other third parties as it sees fit and, where the Company is to resell the Services, the Company acknowledges that it is not Simwood's exclusive reseller for the Services.
- 17.14 Simwood shall be entitled to sub-contract any obligations it may have under this Agreement. Simwood may at its sole discretion provide any Service either directly or through some combination of subcontractors, subsidiaries and/or subsidiaries of Simwood's holding company.